DOCUMENT RESUME

ED 048 387 UD 010 965

TITLE	Hearings Before the Subcommittee on Education of the Committee on Labor and Public Welfare, Ninety-First Congress, Second Session on S. 3883 and 4167, June 9, 24, 30, July 10, and August 11 and 27, 1970. Emergency School Aid Act of 1970.
INSTITUTION	Congress of the U.S., Washington, D.C. Senate Committee on Labor and Public Welfare.
PUB DATE	70
NOTE	613p.
EDRS PRICE	EDRS Price MF-$0.65 HC-$23.03
DESCRIPTORS	Court Litigation, *Educational Finance, *Educational Problems, Elementary Schools, *Government Role, *Minority Groups, Political Influences, Race Relations, *School Integration, Secondary Schools, Statistical Data

ABSTRACT

This document is the report of hearings before the Subcommittee on Education of the Committee on Labor and Public Welfare of the United States Senate, held in June, July, and August, 1970. The hearings relate to the Emergency School Aid Act of 1970, specifically, Senate bills 3883 and 4167. Bill 3883 sought to provide financial assistance to improve education in racially impacted areas and to assist with desegregation problems in elementary and secondary schools and other purposes. Bill 4167 sought to enforce the guarantees of the Fourteenth Amendment with respect to elementary and secondary school desegregation. (DM)

EMERGENCY SCHOOL AID ACT OF 1970

U.S. DEPARTMENT OF HEALTH, EDUCATION
& WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED
EXACTLY AS RECEIVED FROM THE PERSON OR
ORGANIZATION ORIGINATING IT. POINTS OF
VIEW OR OPINIONS STATED DO NOT NECES-
SARILY REPRESENT OFFICIAL OFFICE OF EDU-
CATION POSITION OR POLICY

ED0 48387

HEARINGS

BEFORE THE

SUBCOMMITTEE ON EDUCATION

OF THE

COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 3883

TO PROVIDE FINANCIAL ASSISTANCE TO IMPROVE EDUCATION IN RACIALLY IMPACTED AREAS AND TO ASSIST SCHOOL DISTRICTS TO MEET SPECIAL PROBLEMS INCIDENT TO DESEGREGATION IN ELEMENTARY AND SECONDARY SCHOOLS, AND FOR OTHER PURPOSES

S. 4167

TO ENFORCE THE GUARANTEES OF THE FOURTEENTH AMENDMENT WITH RESPECT TO THE DESEGREGATION OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

JUNE 9, 24, 30, JULY 10, AUGUST 11 AND 27, 1970

Printed for the use of the Committee on Labor and Public Welfare

UD 010965

U.S. GOVERNMENT PRINTING OFFICE
49-732O WASHINGTON : 1970

1

COMMITTEE ON LABOR AND PUBLIC WELFARE

RALPH YARBOROUGH, Texas, *Chairman*

JENNINGS RANDOLPH, West Virginia
HARRISON A. WILLIAMS, JR., New Jersey
CLAIBORNE PELL, Rhode Island
EDWARD M. KENNEDY, Massachusetts
GAYLORD NELSON, Wisconsin
WALTER F. MONDALE, Minnesota
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California
HAROLD E. HUGHES, Iowa

JACOB K. JAVITS, New York
WINSTON L. PROUTY, Vermont
PETER H. DOMINICK, Colorado
GEORGE MURPHY, California
RICHARD S. SCHWEIKER, Pennsylvania
WILLIAM B. SAXBE, Ohio
RALPH TYLER SMITH, Illinois

ROBERT O. HARRIS, *Staff Director*
JOHN S. FORSYTHE, *General Counsel*
ROY H. MILLENSON, *Minority Staff Director*
EUGENE MITTELMAN, *Minority Counsel*

SUBCOMMITTEE ON EDUCATION

CLAIBORNE PELL, Rhode Island, *Chairman*

RALPH YARBOROUGH, Texas
JENNINGS RANDOLPH, West Virginia
HARRISON A. WILLIAMS, JR., New Jersey
EDWARD M. KENNEDY, Massachusetts
WALTER F. MONDALE, Minnesota
THOMAS F. EAGLETON, Missouri

WINSTON L. PROUTY, Vermont
JACOB K. JAVITS, New York
PETER H. DOMINICK, Colorado
GEORGE MURPHY, California
RICHARD S. SCHWEIKER, Pennsylvania

STEPHEN J. WEXLER, *Counsel*
RICHARD D. SMITH, *Associate Counsel*
ROY H. MILLENSON, *Minority Professional Staff Member*

CONTENTS

Test of: Page
- S. 3883 2
  - Departmental Reports:
    - Bureau of the Budget 19
    - Department of Health, Education, and Welfare 19
- S. 4167 418

CHRONOLOGICAL LIST OF WITNESSES

Tuesday, June 9, 1970

Javits, Senator Jacob K., opening statement 20
Finch, Hon. Robert H., Secretary of Health, Education, and Welfare; accompanied by Hon. John G. Veneman, Under Secretary of Health, Education, and Welfare; Hon. James E. Allen, Jr., Assistant Secretary of Education, and U.S. Commissioner of Education; J. Stanley Pottinger, Director, Office for Civil Rights; James W. McLane, Executive Assistant to the Secretary for Programs/Special Affairs; Gregory Anrig, Executive Assistant to the Commissioner of Education; and T. Michael O'Keefe, Director for Education Planning, Office of the Assistant Secretary for Planning and Evaluation 23

Wednesday, June 24, 1970

Lumley, John M., Assistant Executive Secretary of the National Education for Legislation and Federal Relations, representing George Fischer, president, National Education Association; accompanied by Stanley McFarland and Mrs. Mary Gereau 115
Glickstein, Howard A., Staff Director, U.S. Commission on Civil Rights, accompanied by Jonathan Fleming 126

Tuesday, June 30, 1970

Edelman, Marian Wright, Washington Research Project Action Council 147
Sussna, Frances, director, Multi-Culture Institute, San Francisco, Calif 203

Friday, July 10, 1970

Reynoso, Cruz, director, California Rural Legal Assistance, San Francisco, Calif 225
Ruiz, Manuel, member, U.S. Commission on Civil Rights 246
Cardenas, Dr. Jose A., superintendent, Edgewood Independent Schools District, San Antonio, Tex 286
Ramirez, Henry, chief of the Mexican-American Studies Division, Commission on Civil Rights 313
Reyes, Maria, director, Migrant Education Program, Commonwealth of Massachusetts 374

Tuesday, August 11, 1970

Mitchell, Clarence, director, Washington Bureau of the National Association for the Advancement of Colored People 379
Parks, Paul, Director, Model Cities Program, Boston, Mass.; accompanied by Dr. Barbara L. Jackson, Assistant Administrator for Education and Training, Boston Model Cities; and Mrs. Virginia Richardson, Assistant Administrator for Administrative Services, Boston Model Cities 399
Steinhilber, August, executive director for congressional relations, National School Boards Association; accompanied by Michael A. Resnick, legislative assistant 405
Megle, Carl J., director of legislation, the American Federation of Teachers 412

THURSDAY, AUGUST 27, 1970

Page
Spong, Hon. William B., Jr., a U.S. Senator from the State of Virginia 439
Preyer, Hon. Richardson, a Representative in Congress from the State of North Carolina 444
Profitt, Dr. Brank, superintendent of public schools, Burlington, N.C.; Vincent Thomas, chairman, Norfolk City School Board, and A. C. Epps, Esq., vice chairman, Richmond City School Board 470
Epps, A. C., vice chairman, Richmond City School Board, Richmond, Va. 505

STATEMENTS

Allen, James E., Jr., Assistant Secretary for Education and U.S. Commissioner of Education, to General Subcommittee on Education, House of Representatives on June 8, 1970, prepared statement 89
Bickel, Alexander M., New Haven, Conn., Center for Advanced Study in the Behavioral Sciences, Stanford, Calif., prepared statement 452
Bond, Rev. John M., superintendent, Diocese of Charleston, S.C., prepared statement 518
Cardenas, Dr. Jose A., superintendent, Edgewood Independent Schools District, San Antonio, Tex 286
  Prepared statement 291
Chin, Irving Sheu Kee, chairman, Chinatown Advisory Council to the Borough of Manhattan, New York, N.Y., prepared statement 573
Davis, Walter G., director, Department of Education, American Federation of Labor and Congress of Industrial Organizations, prepared statement 521
Edelman, Marian Wright, Washington Research Project Action Council 147
  Prepared statement 175
Epps, A. C., vice chairman, Richmond City School Board, Richmond, Va. 505
Executive Council, AFL-CIO, on the Emergency School Aid Act, prepared statement 528
Finch, Hon. Robert H., Secretary of Health, Education, and Welfare; accompanied by Hon. John G. Veneman, Under Secretary of Health, Education, and Welfare; Hon. James E. Allen, Jr., Assistant Secretary of Education, and U.S. Commissioner of Education; J. Stanley Pottinger, Director, Office for Civil Rights; James W. McLane, Executive Assistant to the Secretary for Programs/Special Affairs; Gregory Anrig, Executive Assistant to the Commissioner of Education; and T. Michael O'Keefe, Director for Education Planning, Office of the Assistant Secretary for Planning and Evaluation 23
Glickstein, Howard A., Staff Director, U.S. Commission on Civil Rights, accompanied by Jonathan Fleming 126
Hagler, Mrs. J. D., on behalf of the Maxton City Board of Education on the Emergency School Aid Act, prepared statement 529
Javits, Senator Jacob K., opening statement 20
Lumley, John M., assistant executive secretary of the National Education for Legislation and Federal Relations, representing George Fischer, president, National Education Association; accompanied by Stanley McFarland and Mrs. Mary Gereau 115
McCarthy, Rev. John, administrator, St. Theresa Catholic School, Houston, Tex., prepared statement 516
Megle, Carl J., director of legislation, the American Federation of Teachers 412
Mitchell, Clarence, director, Washington Bureau of the National Association for the Advancement of Colored People 379
  Prepared statement 383
  Statement in opposition to national school desegregation bill, S. 4167 553
Nyquist, Ewald B., president, the University of the State of New York and commissioner of education, prepared statement 509
Parks, Paul, director, Model Cities Program, Boston, Mass.; accompanied by Dr. Barbara L. Jackson, assistant administrator for education and training, Boston Model Cities; and Mrs. Virginia Richardson, assistant administrator for administrative services, Boston Model Cities 399
  Prepared statement 402
Preyer, Hon. Richardson, a Representative in Congress from the State of North Carolina 444
  Statement before the General Subcommittee on Education of the Committee on Education and Labor, July 16, 1970 463

Page
Proffitt, Dr. Brank, superintendent of public schools, Burlington, N.C.; Vincent Thomas, chairman, Norfolk City School Board, and A. C. Epps, Esq., vice chairman, Richmond City School Board 470
  Prepared statement 480
Ramirez, Henry, chief of the Mexican-American Studies Division, Commission on Civil Rights 313
Reyes, Maria, director, migrant education program, Commonwealth of Massachusetts 374
Reynoso, Cruz, director, California Rural Legal Assistance, San Francisco, Calif 225
  Prepared statement, with attachments 230
Ruiz, Manuel, member, U.S. Commission on Civil Rights 246
  Prepared statement, with accompanying exhibits 248
Spong, Hon. William B., Jr., a U.S. Senator from the State of Virginia 439
Steinhilber, August, executive director for congressional relations, National School Boards Association; accompanied by Michael A. Resnick, legislative assistant 405
Sussna, Frances, director, Multi-Culture Institute, San Francisco, Calif 203
U.S. Catholic Conference on Emergency School Aid Act, S. 3883, prepared statement 51

3

ADDITIONAL INFORMATION

Articles, publications, and so forth:

  "A Black Man Looks at Black Racism," by Terry A. Francois, a Reader's Digest reprint 214
  "A Pluralistic Day School," by Rabbi Arthur J. Abrams, Berkeley, reprint of a letter to the editor of Reconstructionist, May 29, 1970 220
  Allocation to Spanish-surnamed Americans and Indians 83
  "Another Vanishing American—The Black Principal," by J. C. James, from the New Republic, September 26, 1970 565
  "Do Most Americans Secretly Want Segregation?", by Senator Abraham Ribicoff, from Look, September 8, 1970 567
  "Justifications of Supplemental Appropriation Estimates for Committee on Appropriations—Emergency School Assistance for 1970," published by the U.S. Department of Health, Education, and Welfare 37
  "NAACP Focus Needed on Northern Schools Now" 385
  North-South Distribution of Title I Funds 69
  "Preliminary Staff Analysis—Mexican American Education Study," by U.S. Commission on Civil Rights, June 4, 1970 333
  "School Busing a U.S. Tradition," by Davis Johnson, from the New York Times, May 24, 1970 63
  "Some Concepts of a Multi-Culture Curriculum," by Frances Sussna 208
  "The Busing Myth—Seg Academies Bus More Children, and Further—A South Today Report," by Leonard Levine and Kitty Griffith 561
  "The Education of the Mexican American," a Summary of the Proceedings of the Lake Arrowhead and Anaheim Conferences 265
  "The Leadership Conference on Civil Rights Consensus on Emergency School Aid Funds" 520

Communications to:

  Abbott, Dr. R. Max, assistant superintendent, Department of Public Instruction, State of North Carolina, Raleigh, N.C., from B. Everett Jordan, a U.S. Senator from the State of North Carolina, July 2, 1970 555
  Black, Creed C., Assistant Secretary for Legislation, from Sidney A. Saperstein, Acting General Counsel, Office of the Secretary, Department of Health, Education, and Welfare, July 14, 1970 86
  Finch, Hon. Robert H., Secretary, Department of Health, Education, and Welfare, Washington, D.C., from Hon. John L. McClellan, a U.S. Senator from the State of Arkansas, Select Committee on Equal Educational Opportunity, Washington, D.C., July 19, 1970 90

Communications to—Continued

Page
- Hesburgh, Rev. Theodore M., C.S.C., Chairman, Commission on Civil Rights, Washington, D.C., from Hon. Edward M. Kennedy, a U.S. Senator from the State of Massachusetts, U.S. Senate, May 25, 1970 331
- Javits, Hon. Jacob K., a U.S. Senator from the State of New York, from Elliot L. Richardson, Secretary, HEW, Washington, D.C., August 3, 1970 70
- Jordan, Hon. B. Everett, a U.S. Senator from the State of North Carolina, from Dr. R. Max Abbott, assistant superintendent, Office of Superintendent of Public Instruction, State of North Carolina, Raleigh, N.C., June 10, 1970 556
- Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts, from Howard A. Glickstein, Staff Director, U.S. Commission on Civil Rights, Washington, D.C., June 6, 1970 332
- McClellan, Hon. John L., a U.S. Senator from the State of Arkansas, from Elliot L. Richardson, Secretary of Health, Education, and Welfare, Washington, D.C., August 3, 1970 93
- Mondale, Hon. Walter F., a U.S. Senator from the State of Minnesota, from Elliot L. Richardson, Secretary of Health, Education, and Welfare, Washington, D.C., August 3, 1970, with Answers to Questions of Senator Mondale on Emergency School Aid Act 94
- Pell, Hon. Claiborne, a U.S. Senator from the State of Rhode Island, from:
  - Allen, Father Michael, O.M.I., Catholic chaplain at Pan American College, Texans for the Educational Advancement of Mexican Americans, San Antonio, Tex., July 2, 1970 560
  - Bickel, Alexander M., Center for Advanced Study in the Behavioral Sciences, Stanford, Calif., August 25, 1970 451
  - Dafoe, Don M., executive secretary, Council of Chief State School Officers, Washington, D.C., June 25, 1970 551
  - DeLugo, Ron, Virgin Islands Representative to Washington, D.C., Office of the Virgin Islands Representative to Washington, D.C., Washington, D.C., July 17, 1970 564
  - Donohue, Rev. Msgr. James C., director, Division of Elementary and Secondary Education, U.S. Catholic Conference, Department of Education, Washington, D.C., August 20, 1970 512
  - Ervin, Sam J., a U.S. Senator from the State of North Carolina, Washington, D.C.:
    - July 2, 1970 529
    - June 10, 1970, with enclosure 534
    - June 18, 1970, with enclosure 543
    - June 19, 1970, with enclosure 540
  - Ford, A. W., commissioner, Department of Education, Little Rock, Ark., August 5, 1970 548
  - Garcia, Remigio L., principal, Burnet School, San Antonio, Tex., June 29, 1970 558
  - Hesburgh, Theodore M., Chairman, U.S. Commission on Civil Rights, Washington, D.C., August 6, 1970 322
  - Holland, Hon. Spessard L., a U.S. Senator from the State of Florida, June 9, 1970, with enclosure 537
  - Krettek, Germaine, director, American Library Association, Washington, D.C., June 25, 1970, with enclosure 546
  - Miller, Dr. Hubert J., acting president, Texans for the Educational Advancement of Mexican Americans, San Antonio, Tex., June 29, 1970 559
  - Ribicoff, Hon. Abraham A., a U.S. Senator from the State of Connecticut, Committee on Government Operations, Washington, D.C., September 17, 1970 (with enclosure) 567
  - Richardson, Elliot L., the Secretary of Health, Education, and Welfare, Washington, D.C., July 24, 1970 90
  - Spong, Hon. William B., Jr., a U.S. Senator from the State of Virginia:
    - August 5, 1970, with enclosure 426
    - August 18, 1970 439
  - Steinhilber, August W., director, Federal and congressional relations, National School Boards Association, Washington, D.C., September 10, 1970 411
  - Veneman, John G., Under Secretary of Health, Education, and Welfare, Washington, D.C., July 6, 1970 (memorandum) 89

Communications to—Continued

Page
- Preyer, Hon. Richardson, a Representative in Congress from the State of North Carolina, from Jack Greenberg, director-counsel, NAACP Legal Defense and Educational Fund, Inc., New York, N.Y., March 5, 1970 388
- Singley David M., superintendent, Maxton City Schools, Maxton, N.C., from J. Reginald McVicker, Jr., AIA, Jordan, Snowden & McVicker, Architects Engineers, Laurinburg, N.C., June 9, 1970, with enclosure 532
- Udall, Hon. Morris K., a Representative in Congress from the State of Arizona, from Jack Greenberg, director-counsel, NAACP Legal Defense and Educational Fund, Inc., New York, N.Y., March 5, 1970 388
- Wexler, Stephen J., counsel, Subcommittee on Education, Washington, D.C., from Marvin Caplan, Director, Washington Office, Leaedership Conference on Civil Rights, Washington, D.C., August 10, 1970, with enclosure 520
- Yarborough, Hon. Ralph, a U.S. Senator from the State of Texas, from Howard A. Glickstein, Staff Director, U.S. Commission on Civil Rights, Washington D.C., August 28, 1970, with enclosure 428

Draft of basic policies for administering the emergency school assistance appropriation of $150 million now under preliminary consideration by HEW submitted by Secretary Finch, Department of HEW 139

Questions and Answers:

- Answers to questions of Senator Mondale—re Emergency School Aid Act by the Secretary of the Department of HEW 94

Selected tables:

- Districts in New York State eligible for assistance under the emergency school aid bill 73
- Formula allotment distribution to States—proportion and amount 72
- Table I.—Allocation under alternative funding levels, by State 28
- Table II.—Summary of eligibility under categories I, II, and III 28
- Table II–A.—Eligibility under category I, voluntary plan and court ordered districts, by State 29
- Table II–B.—Eligibility under category II, eliminating districts eligible under category I, by State 29
- Table II–C.—Category III eligibles excluding districts eligible under category I, by State 30
- Table III–A.—The national picture 31
- Table III–B.—Extent of racial isolation in Nation 31
- Table III–C and D.—Problem by region 32

EMERGENCY SCHOOL AID ACT OF 1970

TUESDAY, JUNE 9, 1970

U.S. SENATE, SUBCOMMITTEE ON
EDUCATION OF THE COMMITTEE ON LABOR AND
PUBLIC WELFARE, AND THE SELECT COMMITTEE ON
EQUAL EDUCATIONAL OPPORTUNITY, JOINT HEARING,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room G-308, New Senate Office Building, Senator Claiborne Pell (chairman of the Subcommittee on Education), presiding.

Present: Senators Pell (presiding), Mondale, Dominick, Javits, Prouty, Spong, Kennedy, Hughes, and Schweiker.

Committee staff members present: Stephen J. Wexler, counsel; Richard D. Smith, associate counsel; and Roy H. Millenson, minority professional staff member, of the Committee on Labor and Public Welfare; and William C. Smith, staff director, and Leonard P. Strickman, minority professional staff member, Select Committee on Equal Educational Opportunity.

Senator PELL. The hearing of the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, today meeting jointly with the Select Committee on Equal Educational Opportunity, which has a similar responsibility in the area we will be discussing, will come to order.

Today we will receive the administration's views with regard to S. 3883, the Emergency School Aid Act of 1970, introduced by Senator Javits of New York. It should be noted that I am a cosponsor of the bill. Such action marks a departure from my usual practice of not cosponsoring bills which will come before the Subcommittee on Education. Nevertheless, I did join with Senator Javits, for I support any effort which will bring about equal educational opportunities for all of our Nation's children. When I heard of the administration's plans to transmit a suggested bill to Congress, I immediately promised hearings. Unfortunately the administration twice requested postponement of these hearings. Nonetheless, I am glad that we are able to all meet here this morning.

(The text of S. 3883 and departmental reports received by the Committee follow:)

91st CONGRESS
2d Session

S. 3883

IN THE SENATE OF THE UNITED STATES

May 26, 1970

Mr. Javits (for himself and Mr. Pell) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

---

A BILL

To provide financial assistance to improve education in racially impacted areas and to assist school districts to meet special problems incident to desegregation in elementary and secondary schools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency School Aid Act of 1970".

PURPOSE

Sec. 2. The purpose of this Act is to provide financial assistance—

(a) to aid local educational agencies throughout the Nation to meet the special needs incident to the elimina-

II

tion of racial segregation and discrimination among students and faculty in elementary and secondary schools;

(b) to encourage the voluntary elimination, reduction, or prevention of racial isolation in schools with substantial proportions of minority group students in order to improve the quality of education available to such students; and

(c) to aid children in elementary and secondary schools to overcome the educational disadvantages of racial isolation by assisting, in a concentrated manner, school districts with high proportions of minority group students to carry out interracial educational programs and other programs to improve the quality of their educational services.

APPROPRIATIONS

SEC. 3. (a) There are authorized to be appropriated for carrying out this Act not in excess of $500,000,000 for the fiscal year ending June 30, 1971, and not in excess of $1,000,000,000 for the succeeding fiscal year.

(b) Funds so appropriated shall remain available for obligation for one fiscal year beyond that for which they are appropriated.

ALLOTMENTS AMONG STATES

SEC. 4. (a) From the sums appropriated pursuant to section 3 for carrying out this Act for any fiscal year, the

Secretary shall allot an amount equal to two-thirds thereof among the States by allotting to each State $100,000 plus an amount which bears the same ratio to the balance of such two-thirds of such sums as the adjusted number of minority group children (as defined in subsection (c)) in the State bears to the adjusted number of minority group children in all of the States. The remainder of such sums may be expended by the Secretary as he may find necessary or appropriate for grants or contracts to carry out the purposes of this Act.

(b) The amount by which any allotment to a State for a fiscal year under subsection (a) exceeds the amount which the Secretary determines will be required for such fiscal year for programs or projects within such State which meet the requirements for approval of applications under this Act shall be available for reallotment from time to time, on such dates during such year as the Secretary may fix by regulation, to other States in proportion to the original allotments to such States under subsection (a) for that year but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a fiscal year shall be deemed part of its allotment under subsection (a) for such year.

(c) For the purpose of this section, the term "adjusted number of minority group children" for any State means a number equal to the sum of (1) the number of minority group children (as defined in section 9 (d)) enrolled in public schools in local educational agencies in such State which are carrying out a plan of desegregation (A) pursuant to a final order of a United States court, issued within a period not to exceed the two fiscal years preceding the fiscal year for which the allotment under this section is to be made, or (B) pursuant to a determination of the Secretary, made within such period, that such plan is adequate to meet the requirements of title VI of the Civil Rights Act; and (2) the number of minority group children enrolled in public schools in local educational agencies in a State. The adjusted number of minority group children in each State shall be determined by the Secretary on the basis of the most recent available data satisfactory to him.

ELIGIBILITY FOR FINANCIAL ASSISTANCE

SEC. 5. (a) The Secretary may provide financial assistance (through grant or contract) pursuant to applications approved under section 7—

(1) to assist any local educational agency which

is implementing a plan of desegregation, or which has, within two years prior to its application hereunder, completed the implementation of such a plan, to meet the additional costs (as determined under subsection (c)) of implementing such plan or of carrying out special programs or projects designed to enhance the possibilities of successful desegregation;

(2) to assist any local educational agency to meet the additional costs of carrying out a plan to eliminate or reduce racial isolation in one or more of the racially isolated schools (as defined in section 9(g)) in the school district of such agency, or to reduce the number of minority group children in such schools, or to prevent racial isolation reasonably likely to occur (in the absence of assistance under this Act) in one or more schools in such district which are not racially isolated but have a substantial enrollment of minority group children; or

(3) to assist a local educational agency or other public or private agency, institution, or organization (but only through contracts in the case of a private agency, institution, or organization other than a nonprofit one), to carry out interracial educational programs or projects involving the joint participation of minority group and nonminority group children attending dif-

ferent schools where such minority group children attend racially isolated schools in a school district in which the number of minority group children in average daily membership in the public schools, for the fiscal year preceding the fiscal year for which such assistance is provided, is (A) at least ten thousand or (B) more than 50 per centum of such average daily membership of all children in such schools, except that if such agency demonstrates that, in the case of some racially isolated children, provision for such programs cannot practicably be made, then to carry out unusually promising pilot or demonstration programs or projects to overcome the adverse educational effects of racial isolation upon such children.

(b) In such cases where the Secretary finds that it would more effectively carry out the purposes of this Act, he may make grants to any public or nonprofit private agency, institution, or organization (other than a local educational agency), and contract with any public or private agency, institution, or organization to carry out programs or projects designed to support the development or implementation of a plan, program, or project described in clause (1) or (2) of section 5 (a).

(c) The amount of financial assistance to a local educational agency under this section may not exceed those costs which are determined by the Secretary, in accordance with regulations prescribed by him, to result in a net increase in the aggregate operating expenditures of such agency for a fiscal year.

AUTHORIZED ACTIVITIES

SEC. 6. Financial assistance under section 5 shall be available for programs or projects involving activities designed to carry out the purposes of this Act, including—

(a) the provision of additional professional or other staff members (including staff members specially trained in problems incident to desegregation or to the elimination, reduction, or prevention of racial isolation) and the training and retraining of staff for such schools;

(b) remedial and other services to meet the special needs of children in schools which are affected a plan described in clause (1) or (2) of section 5(a) or are racially isolated, including special services for gifted and talented children in such schools;

(c) comprehensive guidance, counseling, and other personal services for pupils;

(d) development and employment of new instructional techniques and materials designed to meet the needs of racially isolated schoolchildren;

(e) innovative interracial educational programs or projects involving the joint participation or minority group and nonminority group children attending different schools, including extracurricular activities and cooperative exchange or other arrangements between schools within the same or different school districts;

(f) repair or minor remodeling or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of equipment) and the lease or purchase of mobile classroom units or other mobile educational facilities;

(g) the provision of transportation services for public school students, except that, in accordance with section 422 of the General Education Provisions Act, nothing in this Act shall be construed to require the transportation of students in order to overcome racial imbalance;

(h) community activities, including public education efforts, in support of a plan, program, project, or other activity under this Act;

(i) special administrative activities, such as the rescheduling of students, or teachers, or the provision of information to parents and other members of the general public, incident to the implementation of a plan described in clause (1) or (2) of section 5(a);

(j) planning and evaluation activities; and

(k) other specially designed programs or projects which meet the purposes of this Act.

APPROVAL OF APPLICATIONS

SEC. 7. (a) An application for assistance under this Act may be approved by the Secretary only if he determines—

(1) that such application

(A) sets forth a plan which is sufficiently comprehensive to offer reasonable assurance that it will achieve one or more purposes for which grants may be made under this Act; and

(B) contains such other information, terms, conditions, and assurances as the Secretary may require to carry out the purposes of this Act;

(2) that the State educational agency governing the school district or school districts in which the approved program or project will be carried out has been given reasonable opportunity to offer recommendations to the applicant and to submit comments to the Secretary;

(3) in the case of an application for assistance under clause (3) of section 5, that the program or project to be assisted will involve an additional expenditure per pupil to be served, determined in accordance with regulations prescribed by the Secretary, of sufficient magni-

tude to provide reasonable assurance that the desired educational impact will be achieved and that funds under this Act will not be dispersed in such a way as to undermine their effectiveness;

(4) in the case of an application by a local educational agency, that, to the extent consistent with the number of children in the school district of such agency enrolled in private elementary and secondary schools which are racially isolated, such agency has made provisions for special educational services and arrangements which are designed to overcome the effects of such isolation and in which such children can participate;

(5) that the applicant has adopted effective procedures, including provisions for such objective measurements of educational and other change to be effected by this Act as the Secretary may require, for the continuing evaluation of programs or projects under this Act, including their effectiveness in achieving clearly stated program goals, their impact on related programs and upon the community served, and their structure and mechanisms for the delivery of services and including, where appropriate, comparisons with proper control groups composed of persons who have not participated in such programs; and

(6) that the applicant is not reasonably able to pro-

vide, out of non-Federal sources, the assistance for which the application is made.

(b) In the case of an application by a combination of local educational agencies for jointly carrying out a program or project under this Act, at least one such agency shall be an agency described in section 5 and any one or more such agencies joining in such application may be authorized to administer such program or project.

ESTABLISHMENT OF PRIORITIES

SEC. 8. (a) The Secretary may, from time to time, set dates by which applications for grants under this Act shall be filed and may prescribe an order of priority to be followed in approving such applications. Any order of priority so prescribed may give special weight to one or more categories of applicants or to one or more categories of programs or projects or to applicants which fall within more than one category of need.

(b) In determining whether to make any grant under section 5 or in fixing the amount thereof, the Secretary shall take into account such criteria as he deems pertinent, including—

(1) the relative need for assistance, taking into account such factors as the extent of racial isolation in the school district to be served and the degree to which measurable deficiencies in the quality of public educa-

tion afforded in such school district exceed those of other school districts;

(2) the relative promise which the program or project affords in carrying out the purposes of this Act;

(3) the degree to which the program or project is likely to effect a decrease in racial isolation in racially isolated schools; and

(4) the amount available for assistance in the State under this Act in relation to the applications pending before him.

DEFINITIONS

SEC. 9. As used in this Act, except when otherwise specified—

(a) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and other related material.

(b) The term "gifted and talented children" means, in accordance with objective criteria prescribed by the Secretary, children who have outstanding intellectual ability or creative talent.

(c) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control, or direction, of, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(d) (1) The term "minority group children" means (A) children, aged five to seventeen, inclusive, who are Negro, American Indian, or Spanish-Surnamed American, and, (B) (except for the purposes of section 4), as determined by the Secretary, children of such ages who are from environments where the dominant language is other than English (such as French speaking and Oriental children) and who, as a result of limited English-speaking ability, are educationally deprived, and (2) the term "Spanish-Surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

(e) The term "nonprofit" as applied to an agency, organization, or institution means an agency, organization, or institution owned or operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) The term "plan of desegregation" means a plan which has been approved by the Secretary as adequate under title VI of the Civil Rights Act for the desegregation of racially segregated students or faculty in elementary and secondary schools or which has been undertaken pursuant to a final order of a court of the United States requiring such desegregation or otherwise requiring the elimination of racial discrimination in an elementary and secondary school system.

(g) The terms "racially isolated school" and "racial isolation" in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 50 per centum of the average daily membership of a school.

(h) The terms "elementary and secondary school" and "school" mean a school which provides elementary or secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(i) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(j) The term "State" means one of the fifty States or the District of Columbia.

(k) The term "State educational agency" means the

State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for this purpose.

EVALUATION

SEC. 10. Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation under this Act for any fiscal year shall be available to him for evaluation (directly or by grants or contracts) of the program authorized by this Act, and in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.

JOINT FUNDING

SEC. 11. Pursuant to regulations prescribed by the President, where funds are advanced by the Department of Health, Education, and Welfare, and one or more other Federal agencies for any project or activity funded in whole or in part under this Act, any one Federal agency may be designated to act for all in administering the funds advanced. In such cases, any such agency may waive any technical grant or contract requirement (as defined by regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose.

NATIONAL ADVISORY COUNCIL

Sec. 12. The President shall appoint a National Advisory Council on the Education of Racially Isolated Children, consisting of twelve members, for the purpose of reviewing the administration and operation of this Act and making recommendations for the improvement of this Act and its administration and operation and for increasing the effectiveness of programs or projects carried out pursuant to this Act.

REPORTS

Sec. 13. The Secretary shall include in his annual report to the Congress a full report as to the administration of this Act and the effectiveness of programs or projects thereunder.

GENERAL PROVISIONS

Sec. 14. (a) The provision of subpart 2 of part B and part C of the General Education Provisions Act (title IV of Public Law 247 (Ninetieth Congress) as amended by title IV of Public Law 230 (Ninety-first Congress)) shall apply to the program of Federal assistance authorized under this Act as if such program were an applicable program under such General Education Provisions Act, and the Secretary shall have the authority vested in the Commissioner of Education by such subpart and such part with respect to such program.

(b) Section 422 of such General Education Provisions Act is amended by inserting "the Emergency Educational Assistance Act of 1970;" after "the International Education Act of 1966;".

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 8, 1970.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 27, 1970, for our views on S. 3883, a bill "To provide financial assistance to improve education in racially impacted areas and to assist school districts to meet special problems incident to desegregation in elementary and secondary schools, and for other purposes."

S. 3883 is similar to a bill transmitted to the Congress by the President. It differs, however, from that bill in three significant respects. First, S. 3883 contains a broader definition of "minority groups" to include linguistic minorities and would make provision for the participation of private school children in special educational services. The provisions in the Administration's bill focus more precisely on the needs of racial minorities in the public schools. Second, unlike the Administration bill, S. 3883 would establish a national advisory council to review programs that would be established by the bill. Finally, the Administration recommended that the use of funds for transportation services solely to achieve racial balance be prohibited; S. 3883 would provide that nothing in the bill may be construed to require the transportation of students in order to overcome racial imbalance.

We recommend the enactment of S. 3883, with amendments to reflect the provisions initially submitted by the Administration. Enactment of S. 3883, with these amendments, would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
July 28, 1970.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 27, 1970, for a report on S. 3883, a bill "To provide financial assistance to improve education in racially impacted areas and to assist school districts to meet special problems incident to desegregation in elementary and secondary schools, and for other purposes".

S. 3883 is substantially the same as a bill, the Emergency School Aid Act of 1970, which embodies the recommendations of the President in his Message of May 21, 1970, on Aid to Schools with Financial Problems and which was transmitted to the Congress with that Message.

S. 3883 differs from that bill in the following respects:

(1) S. 3883 does not contain an express prohibition against the expenditure of funds "to establish or maintain the transportation of students solely to achieve racial balance". It is not the intent of this language to preclude the exercise of discretion to assist transportation which is supported by substantial educational or other considerations but to provide assurance that the proposed legislation will not be used to impose transportation requirements for the sole purpose of achieving a mathematical racial balance. (S. 3883 and the bill transmitted with the May 21 Message both provide that nothing therein may be construed to require the transportation of students or teachers in order to overcome racial imbalance.)

(2) S. 3883 includes in the definition of "minority group" (for the purposes of determining eligibility for assistance) children from environments where the dominant language is other than English and who, as a result, are educationally deprived, and requires that local educational agencies submitting proposals to the Secretary indicate that they have made appropriate provisions for the participation in authorized programs of children in racially isolated non-public

schools. We believe that omission of these provisions would more appropriately direct the bill to the problems of desegregation and racial isolation.

(3) Finally, S. 3883 contains a provision, not found in the Administration recommendations, for the establishment of a national advisory council to review the administration of the Act. We do not feel that this provision is necessary in a short term emergency measure.

For the reasons stated in the Message of the President, as further amplified in testimony of the Secretary and other representatives of the Department before the Subcommittee on Education of your committee on June 9, 1970, we strongly urge prompt and favorable consideration of S. 3883 with the appropriate changes requested by the Administration.

We are advised by the Office of Management and Budget that enactment of S. 3883 with these amendments would be in accord with the program of the President.

Sincerely,

ELLIOT L. RICHARDSON, *Secretary.*

Senator PELL. The bill as introduced is general in tone. It is for this reason that we will be having indepth hearings, both to obtain answers to the many questions raised about the proposal, and to hear from those who wish to impart their views to us. It should be kept in mind, however, that the subject matter is most vital, and deserves expeditious action if we are serious about bringing out a bill this year.

One specific question I would like to bring out at this time before asking Senator Mondale, who is the chairman of the Select Committee on Equal Educational Opportunity for any comments, is addressed to you Mr. Finch: Are you here as Secretary of HEW or as counselor to the President?

Secretary FINCH. I am still Secretary, Mr. Chairman.

Senator PELL. You are still Secretary?

Secretary FINCH. That is correct.

Senator PELL. As you know, we in the Congress have been attempting to get White House counselors to come up before committees. I thought this would be too good to be true.

I also want to stress very strongly that the whole subject matter of the select committee involves this question to which we are directing our own attentions and the subcommittee will be working very closely with the select committee, as they will develop, I am sure, a great deal more on the subject than we will be able to.

For the benefit of the spectators in the audience, the select committee is on your left, my right, and the subcommittee is on my left.

Senator DOMINICK. We just changed the order.

Senator MONDALE. Senator Javits did not want to be on your left.

SENATOR JAVITS' OPENING STATEMENT

Senator JAVITS. Mr. Chairman, I would like to make a brief statement, if I may.

First I would like to welcome the Secretary and express my feelings for the new post that he is going to assume—I know that he will render at least an equal amount of service to our Nation—and to express my great admiration for him and for the extraordinary work that he has done as head of HEW and the fine service he has rendered to our Nation at a very, very difficult time when we have been burdened with so many problems. That he solved some is a great tribute to him, especially gratifying to his old friends like myself.

Secretary **Finch**. I appreciate that very much, Senator.

Senator **Javits**. Second, Mr. Chairman, I would like to note that we are opening hearings on a very significant measure which I have the honor to sponsor for the administration, along with the chairman of the subcommittee, Senator Pell, in a very unusual gesture because he is chairman, has joined as principal cosponsor. To me this demonstrates to the country that this is deeply a bipartisan issue. He is not necessarily committed, and neither am I, to every aspect of the bill, but we thought enough of it to put it in together and are very hopeful of an affirmative result.

I think what has been pointed out and which has been a matter of great doubt for a long time is the fact that there is an equality of weight and status between the failure to desegregate according to the mandate of the Supreme Court and pursuant to the constitutional order and the failure to establish intergroup situations which is in response to the moral commitment and which we call euphemistically "de facto segregation." Whatever you call it, "de facto segregation," "racial unbalance," or "the absence of intergroup activity," it is a serious block to effective education for children of minority groups anywhere in the country, especially in the north and central part of the country where you don't have the established social order of segregation.

And so I join the President, and this bill makes it clear that we do, in the determination that we would deal with so-called de facto segregation with equal vigor. That was the whole thrust of the way we compromised the so-called Stennis amendment to H.R. 514 that we will use in respect of the de jure segregation which has been condemned by the courts under the Constitution.

Mr. Chairman, I would like to point out a very interesting effort to do exactly what we are discussing which has been undertaken in Rochester, N.Y. And I hope very much that we have an opportunity to study the experience there, because they have actually done a great deal in dealing with the problem. And of course we have an excellent witness before us in the Commissioner of Education, who was the Education Commissioner of New York State.

I feel we have a historic opportunity to this bill. It is the first civil rights bill on education and it attacks the problem with an understanding of the facts and that all the pious generalities get us exactly nowhere, desirable as they may be. This takes fundamental activity and money.

Finally, I would like to pay my tribute to our subcommittee chairman, Mr. Pell, for the fine patriotism and public spirit which induced him to join with me in the bill, and to the President, the administration, and the Secretary of HEW, who is before us, for this extraordinary and very important initiative in substantively endeavoring to deal with one of America's truly great injustices and one of America's truly great domestic problems.

Senator **Dominick**. I want to join Senator Javits in welcoming Secretary Finch back to the committee. We have enjoyed having him and

I wish him well in his new job. I hope it will be somewhat less ulcerous than the one he has been holding at the moment.

If I may, Mr. Chairman, I would like to make several additional comments. Although I have great belief in legislation in order to support and give every legislative basis that we can for civil rights measures, I am not a bit sure that we aren't stepping into a hornets' nest here by providing additional Federal funds for so-called de facto segregation. And I say that with great care.

I would hope that we could cure this problem in other ways than just by providing more funds and so-called compensatory education programs which many people have already felt have been ineffective. All we are doing is pouring more money into programs of questionable effect.

The second thing that concerns me is when we start putting a quota system into determining what schools are or are not going to get aid, we immediately exclude, by the size of the quota whatever it may be, schools which may have just as many problems as the schools which will receive funds and yet they get no assistance. What happens to them?

What happens to the poor whites who have just as bad educational problems as everybody else, and yet by the nature of this they are not going to get any aid? I find this is a very difficult thing to deal with. And I find it most complicated. And I, for one, hope that we are going to examine this at some length and not just try to brush it off, because I am not a bit sure that the program as it is now set up, insofar as it deals with de facto segregation, is the way to try to deal with that very vexatious problem.

Senator **Javits**. Would the Senator yield?

Senator **Dominick**. Yes.

Senator **Javits**. I thoroughly agree with the Senator. What he calls poor white, indeed they represent a very, very large number of the poor in the country.

Senator **Dominick**. There are more of them on welfare than anybody else.

Senator **Javits**. I would like to join with the Senator in the assurance that we will dig into that, and I know that Senator Pell and Senator Mondale feel the same way. Our experience has been when you deal with minority problems, you must, because of the continuity of residences, and the nature of the educational conditions of these disadvantaged peoples is of such a character that you must inevitably deal with both. But if there is any case in which that is not dictated by the residential pattern, et cetera, I would certainly like to join with Senator Dominick in the determination.

I thank the Chairman.

Senator **Dominick**. Thank you.

Senator **Pell**. Senator Hughes?

Senator **Hughes**. No comment.

Senator **Pell**. Before proceeding, I neglected to say how sorry I am to see you leaving HEW. We publicly wish you well in your new responsibilities. We have admired your work very much and ask you, Mr. Secretary, as Secretary, to go ahead with your testimony.

STATEMENT OF HON. ROBERT H. FINCH, SECRETARY OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY HON. JOHN G. VENEMAN, UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE; HON. JAMES E. ALLEN, JR., ASSISTANT SECRETARY OF EDUCATION AND U.S. COMMISSIONER OF EDUCATION; J. STANLEY POTTINGER, DIRECTOR, OFFICE FOR CIVIL RIGHTS; JAMES W. McLANE, EXECUTIVE ASSISTANT TO THE SECRETARY FOR PROGRAMS/SPECIAL AFFAIRS; GREGORY ANRIG, EXECUTIVE ASSISTANT TO THE COMMISSIONER OF EDUCATION; AND T. MICHAEL O'KEEFE, DIRECTOR FOR EDUCATION PLANNING, OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION

Secretary FINCH. Thank you, Mr. Chairman.

For the record, I would like to indicate those accompanying me are Under Secretary Veneman, the Commissioner of Education, Mr. Allen, Mr. Stan Pottinger, director of the Office of Civil Rights, James McLane, executive assistant for Special Affairs, and Dr. Gregory Anrig, executive assistant to the Commissioner. They all appear to answer any questions that you may have.

I want to first express my gratitude for the chairman's willingness to allow me to delay the appearance I hoped to make last week. I do appreciate the indulgence of the committee on that score.

Mr. O'Keefe, at the end, has done much of the statistical work. I think everyone else has been identified.

I think it is important to note, in response to some of the points that were made by Senator Dominick and Senator Javits, that the title of this bill is the Emergency School Aid Act of 1970. We are not attempting to reach the same kind of problems in terms of the underprivileged or poverty. We are here trying to deal with an immediate, short term crisis, which the President spelled out in his messages both on March 24 and May 21. We need to help these districts that are now caught up in the desegregation process, under a very proper immediate constraint laid down by the courts. We have to recognize that racial isolation has an adverse effect on the quality of education for all children. I think that it is important, as Senator Javits indicated, that this legislation does take on the question of de facto segregation, a point that Senator Dominick also raised.

As the President has said, until the courts indicate otherwise, this administration does not feel that Federal educational dollars should be cut off from school districts which are segregated not by reason of official action but by reason of housing patterns resulting from private bias and other factors. But it is true that in this bill the Federal Government for the first time is establishing a short term policy addressing itself to de facto segregation.

Substantial assistance for communities desiring to undertake the task of reducing racial isolation in the public schools is being provided. This administration in this bill will commit Federal dollars to help those districts eliminating both de facto and de jure segregation and trying to overcome the educational disadvantages of minority students stemming from racial separation in their schools. We seek to provide resources for these affected school districts to help them meet the administrative challenges incident to the implementation of a desegregation plan, and to ensure educationally sound desegregation programs are successfully carried out.

Educational evidence shows a significant correlation between improved educational achievement of minority children and their presence in predominately majority schools. Yet, 6.1 million minority students are in schools with over 50 percent minority enrollment. Some 4.2 million of these, or almost half of all the Nation's minority students, are in schools whose student populations are 95 percent or more minority.

In view of this need to assist school districts meet the special and immediate needs incident to the desegregation process and the elimination or reduction of racial isolation, we propose that $1.5 billion in Federal funds be committed in fiscal years 1971 and 1972. We don't pretend that this amount is enough to solve all of the problems of all of the Nation's desegregating districts and racially impacted schools. However, we also recognize that a program of greater magnitude is neither administratively nor budgetarily feasible at this time. In addition, we believe that when this amount of money is concentrated on areas of greatest need and on projects holding the greatest promise of success, widespread and profound results can be expected. One of the major anticipated benefits of this outlay is the multiplier effect. New methods and techniques developed under this program to deal with the problems of desegregation and of racial isolation should be replicated with Federal, State, and local funds under other programs. We are committed to assuring the maximum possible impact for the Federal dollars which Congress appropriates under this authority.

We have divided the Emergency School Aid Act into three categories of need. We did this after long and arduous study. The first category is composed of local educational agencies implementing a desegregation plan under Federal court order, or a plan approved under title VI of the Civil Rights Act. Districts which have completed implementation of such a plan within 2 years prior to their application would also be eligible under this category since our experience with title IV has shown that, in general, the needs for special assistance in newly desegregated districts continue for at least 2 years.

We anticipate that at a minimum 861 school districts, with 5.5 million children, will be eligible for this category of aid at the start of the next school year. An additional 360 districts, with another 4.1 million students, may still come into compliance by that date as we pursue negotiation and court litigation. Another 505 districts in the North and West may be eligible under this category in the next few years. These districts have already been identified for review of possible violation of title VI of the Civil Rights Act of 1964.

De jure districts engaged in implementing a plan could receive assistance to meet the additional costs of implementing the plan or of carrying out special educational and supportive programs designed to stabilize the desegregation process and enhance its likelihood of success. Districts which have completed implementation of a plan could receive assistance to carry out special education programs. Eligible activities would include such things as training of teachers, curriculum revision, purchase of materials, repairs or minor remodeling, administrative costs, and planning and evaluation costs. Transportation services could be funded only to the extent that they are part of an approved desegregation plan, and must include more than just the assignment of students.

The second category includes local educational agencies which have one or more schools with an average daily enrollment of 50 percent or more minority students, or with one or more schools in which racial isolation is reasonably likely to occur in the near future.

Such districts, with de facto segregation problems, which desire to reduce de facto segregation in at least one school, would be eligible for aid to meet additional costs of implementing a voluntary plan to reduce the racial isolation of these schools, or to prevent such isolation from occurring in the first place. Eight hundred and six districts containing schools with an enrollment of 50 percent or more minority students, which are not included under category one, may receive funds under this category. These districts contain 4.6 million minority students and a total enrollment of 10.6 million students.

A plan under this category may deal with the elimination, reduction or prevention of racial isolation in one or more schools, as well as an entire school system. The 50 percent requirement is selected as the point at which educational disadvantage is likely to result for minority students unless special assistance is provided. There may also be a need for assistance before this level is reached to strengthen the educational program and thereby prevent the "tipping" process. Top priority in this category—as in all three categories—would go to projects which do the most to reduce racial isolation.

The third category involves local educational agencies in which the average daily enrollment for the entire district is 50 percent or more minority students, or 10,000 or more minority students.

Districts in this category, with heavy concentrations of minority students, would be eligible for funds to meet the costs of additional interracial educational projects or, in exceptional circumstances where such programs are not practicable, demonstration compensatory programs.

This category of assistance is designed to meet the needs of the large school districts and cities whose school populations have such a high proportion of minority children that integration on a meaningful scale is not practicable. Some 392 districts, excluding those districts eligible under category one, would be eligible for this category, with a total of 3.8 million minority students.

Category 3 funds could be used for such programs as a district may design to meet its individual needs. Other public or private organizations also are eligible to participate in programs under this category. The emphasis will be on programs which create an integrated environment for learning basic educational skills such as reading, languages, and mathematics. This could involve such things as exchange of students from different schools within or among school districts for perhaps 1 day of classes a week or afternoon classes each day that would involve interracial experience.

Of course, there may be some districts with such severe problems of racial isolation that interracial projects will be impossible insofar as any significant number of students is concerned. When a district establishes that such a situation exists, then it could receive aid for demonstration compensatory programs which hold particular promise of overcoming the adverse educational effects of racial isolation. In all cases we will require that enough resources are invested per pupil to have a significant impact on education achievement.

We expect that districts will come forward with innovative ideas which can serve as models for other districts. Toward this end, effective procedures for evaluation of projects, including measurement of educational and other changes, will be required. The kinds of activities which could be supported might be similar to those in the first and second categories: special remedial courses, teacher training, additional professional staff, transportation, and planning and evaluation.

S. 3883 also contains a prohibition, in conformity with existing law, against the use of Federal funds to require busing to overcome racial imbalance. We would suggest an added restriction, which would preclude the support of transportation services where the intent is solely to establish racial balance. This would not preclude assistance for transportation which is supported by substantial educational or other relevant considerations apart from simply achieving a mathematical racial balance. We also plan to provide the committee with a memorandum suggesting a few other changes in the legislation to target funds more precisely on the urgent needs of desegregating public schools. We ask that you give these suggestions careful consideration.

This bill places the overall authority for the program with the Secretary of Health, Education, and Welfare. It is necessary to do that, as opposed to putting it in the first instance to the Commissioner of Education, since title VI in the Office of Civil Rights, which Mr. Pottinger heads, is not in the Office of Education. It is necessary to have the delegation through the Secretary so that title IV and title VI can work together. Administrative authority for the program is to be delegated to the Commissioner of Education.

The procedures of the act are designed to effect the President's express purpose of placing funds where immediate infusions of money can make a real difference in terms of educational effectiveness. So the aid will be provided through project grants to local educational agencies and other eligible sponsors to help meet the additional costs resulting from the operation of projects approved. The bill requires that the States have an opportunity to review and comment on project applications submitted by local agencies.

Two-thirds of the funds appropriated would be spent according to a formula for determining the basic amount available within each State for project grants. Every State would receive an initial apportionment of $100,000, and the remaining formula funds would be apportioned according to the proportion of the Nation's minority students in each State. Minority students in districts carrying out a plan of desegregation under a final Federal court order, or under a plan approved by the Secretary of Health, Education, and Welfare as adequate to meet the requirements of title VI of the Civil Rights Act, would be double counted. Thus, the formula gives an explicit priority to the swift and successful completion of desegregation in de jure districts. As these districts complete desegregation, the double counting in the allotment formula would phase out. The priority would then shift to assistance for de facto districts. If any State's allocation is not fully utilized, the remainder of its funds would be reallocated on the same formula basis for use in other States.

This double counting factor is intended to better concentrate funds in the areas of greatest need. This is of critical importance. We want to concentrate funds on the difficult areas. In addition to the priority given the elimination of de jure segregation in the more than 1,200 districts involved in the last 2 years, we must give high priority to those areas where racial isolation in the public schools is greatest. Of the 6.1 million minority children in schools which are 50 percent or more minority, 3.3 million, about 55 percent, are in the 17 Southern and border States, while only 2.8 million are in the rest of the Nation. Of the 4.2 million minority children in schools 95 percent or more minority, 2.8 million, about 67 percent, are in the 17 Southern and border States, while only 1.4 million are in the other States. The double counting formula directs funds into these high priority areas.

One-third of the total funds authorized would be reserved to the Secretary of Health, Education, and Welfare to be channeled into projects with the greatest potential for success. To emphasize our objective of concentrating funds to achieve results and make a difference, and our desire to achieve a multiplier effect with the funds expended, the bill reserves up to 1 percent of the funds for evaluating the effectiveness of programs.

Finally, we have made a supplemental request for funds under existing authorities. Those districts which are required to desegregate by September have an urgent and immediate need for assistance now. And, as all of you on the committee know, now is the time teachers are being hired and materials purchased. The summer is the time that teacher and staff training can be best accomplished. The summer is the period during which schools prepare for the next school session. Therefore, the President has submitted a supplemental request for $150 million to be used under existing legislative authorities for many of the purposes described in this act. With prompt congressional action on his request, funds can be made available now for those districts with the most urgent needs, and for those planning projects for submission when these legislative proposals have been enacted. They, I may want to point out to the committee, are severable in terms of the two, the supplemental and the basic bill itself.

The Department is presently preparing program criteria with respect to the administration of funds under both the new legislative authority and the $150 million supplemental budget request. I intend to call upon outside advisers, as we have, representing school superintendents, civil rights organizations, local and State education departments, the national education organizations and other groups to help up finalize these criteria.

In closing, I would simply ask the committee to give, as they have already indicated they will give, prompt attention.

If I may just very briefly ask Mr. McLane to run quickly through the supporting tables. This will take a very few minutes, and I think it is necessary to lay out the scope of the program.

Senator Pell. Some were distributed last night, but it would be helpful if we all had the new tables right now.

(The tables referred to follow:)

TABLE I.—ALLOCATION UNDER ALTERNATIVE FUNDING LEVELS, BY STATE

[Dollars in thousands]

State	Percent of total minority students[1] double-counting minority in desegregating districts (percent)	Formula only—	
		$350,000,000 program	$1,000,000,000 program
Alabama	4.58	10.56	30.43
Alaska	.07	.26	.61
Arizona	.86	2.06	5.85
Arkansas	1.83	4.28	12.22
California	9.03	20.72	59.85
Colorado	1.26	2.98	8.44
Connecticut	.58	1.42	3.99
Delaware	.22	.60	1.56
District of Columbia	1.18	2.79	7.93
Florida	6.23	14.33	41.37
Georgia	5.35	12.32	35.56
Hawaii	.03	.17	.32
Idaho	.04	.19	.38
Illinois	4.06	9.37	26.99
Indiana	1.02	2.43	6.86
Iowa	.11	.35	.83
Kansas	.34	.88	2.40
Kentucky	.74	1.79	5.00
Louisiana	5.45	12.54	36.18
Maine	.02	.15	.27
Maryland	2.25	5.24	15.04
Massachusetts	.47	1.17	3.25
Michigan	2.67	6.20	17.80
Minnesota	.16	.47	1.17
Mississippi	3.83	8.85	25.46
Missouri	1.21	2.86	8.15
Montana	.05	.21	.43
Nebraska	.14	.42	1.05
Nevada	.12	.37	.94
New Hampshire	.01	.12	.15
New Jersey	2.17	5.05	14.47
New Mexico	1.09	2.59	7.31
New York	6.32	14.53	41.93
North Carolina	6.25	14.37	41.48
North Dakota	.01	.12	.21
Ohio	2.59	6.01	17.23
Oklahoma	.97	2.31	6.52
Oregon	.13	.40	.99
Pennsylvania	2.39	5.56	15.94
Rhode Island	.07	.25	.61
South Carolina	4.07	9.39	27.05
South Dakota	.14	.42	1.05
Tennessee	3.16	7.32	21.01
Texas	11.13	25.51	73.78
Utah	.12	.37	.94
Vermont		.10	.10
Virginia	4.24	9.78	28.17
Washington	.34	.88	2.40
West Virginia	.21	.58	1.50
Wisconsin	.42	1.06	2.91
Wyoming	.06	.24	.49
Total	100.00	233.00	667.00

[1] Minority includes Negroes, Spanish-surnamed Americans and Indians.

TABLE II.—SUMMARY OF ELIGIBILITY UNDER CATEGORIES I, II, AND III

Program category	Number of districts	Total enrollment (millions)	Minority enrollment (millions)
Category I	1,221	9.6	3.1
Category II[1]	806	10.6	4.6
Category III[1]	392	8.1	3.8

[1] Districts which are eligible under category I have been eliminated from categories II and III.

TABLE II-A.—ELIGIBILITY UNDER CATEGORY I, VOLUNTARY PLAN AND COURT ORDERED DISTRICTS, BY STATE

State	Number of districts	Total enrollment	Minority enrollment
Alabama	105	791, 046	280, 385
Alaska	0	0	0
Arizona	0	0	0
Arkansas	125	266, 223	103, 830
California	0	0	0
Colorado	0	0	0
Connecticut	0	0	0
Delaware	0	0	0
District of Columbia	0	0	0
Florida	58	1, 320, 993	312, 117
Georgia	162	1, 005, 064	353, 689
Hawaii	0	0	0
Idaho	0	0	0
Illinois	0	0	0
Indiana	0	0	0
Iowa	0	0	0
Kansas	0	0	0
Kentucky	7	145, 040	15, 813
Louisiana	66	853, 385	328, 278
Maine	0	0	0
Maryland	6	302, 669	38, 572
Massachusetts	0	0	0
Michigan	0	0	0
Minnesota	0	0	0
Mississippi	143	552, 289	271, 326
Missouri	4	6, 598	2, 851
Montana	0	0	0
Nebraska	0	0	0
Nevada	0	0	0
New Hampshire	0	0	0
New Jersey	0	0	0
New Mexico	0	0	0
New York	0	0	0
North Carolina	115	1, 003, 123	346, 583
North Dakota	0	0	0
Ohio	0	0	0
Oklahoma	23	67, 399	14, 224
Oregon	0	0	0
Pennsylvania	0	0	0
Rhode Island	0	0	0
South Carolina	91	633, 484	267, 336
South Dakota	0	0	0
Tennessee	54	546, 162	185, 384
Texas	190	1, 448, 231	438, 965
Utah	0	0	0
Vermont	0	0	0
Virginia	71	617, 457	222, 373
Washington	0	0	0
West Virginia	1	10, 458	473
Wisconsin	0	0	0
Wyoming	0	0	0
Total	1, 221	9, 569, 621	3, 182, 199

TABLE II-B.—ELIGIBILITY UNDER CATEGORY II, ELIMINATING DISTRICTS ELIGIBLE UNDER CATEGORY I, BY STATE

State	Number of districts	Total enrollment	Minority enrollment
Alabama	0	0	0
Alaska	2	18, 445	4, 118
Arizona	44	205, 217	80, 661
Arkansas	0	0	0
California	179	2, 296, 781	903, 812
Colorado	28	236, 544	68, 698
Connecticut	11	178, 086	58, 496
Delaware	4	22, 536	13, 793
District of Columbia	1	148, 725	140, 445
Florida	0	0	0
Georgia	0	0	0
Hawaii [1]			
Idaho	2	5, 977	737
Illinois	44	885, 066	442, 489
Indiana	14	400, 181	106, 779

TABLE II-B.—ELIGIBILITY UNDER CATEGORY II, ELIMINATING DISTRICTS ELIGIBLE UNDER CATEGORY I, BY STATE—Continued

State	Number of districts	Total enrollment	Minority enrollment
Iowa	3	90, 962	7, 124
Kansas	8	157, 048	29, 507
Kentucky	6	85, 708	27, 766
Louisiana	0	0	0
Maine	3	6, 740	2, 797
Maryland	6	170, 887	143, 833
Massachusetts	4	152, 255	41, 310
Michigan	32	666, 050	278, 958
Minnesota	2	120, 344	12, 185
Mississippi	0	0	0
Missouri	15	261, 357	119, 193
Montana	4	7, 930	3, 153
Nebraska	2	66, 651	13, 129
Nevada	6	102, 620	14, 050
New Hampshire	0	0	0
New Jersey	47	391, 133	207, 883
New Mexico	59	250, 716	125, 672
New York	29	1, 401, 172	693, 359
North Carolina	0	0	0
North Dakota	1	692	358
Ohio	27	770, 415	267, 980
Oklahoma	3	184, 160	35, 760
Oregon	2	81, 405	9, 102
Pennsylvania	28	569, 320	247, 450
Rhode Island	1	26, 638	5, 726
South Carolina	0	0	0
South Dakota	5	14, 335	12, 976
Tennessee	0	0	0
Texas	139	432, 052	380, 583
Utah	5	82, 501	8, 669
Vermont	0	0	0
Virginia	0	0	0
Washington	9	153, 980	26, 905
West Virginia	7	149, 126	14, 668
Wisconsin	6	167, 466	41, 761
Wyoming	7	22, 425	4, 501
Total	806	10, 621, 700	4, 596, 900

[1] Data for Hawaii were not available.

TABLE II-C.—CATEGORY III ELIGIBLES EXCLUDING DISTRICTS ELIGIBLE UNDER CATEGORY I, BY STATE

State	Number of districts	Total enrollment	Minority enrollment
Alabama	0	0	0
Alaska	0	0	0
Arizona	32	108, 793	54, 829
Arkansas	0	0	0
California	88	1, 554, 465	697, 788
Colorado	11	132, 987	50, 087
Connecticut	3	74, 062	40, 667
Delaware	1	16, 067	11, 202
District of Columbia	1	148, 725	140, 445
Florida	0	0	0
Georgia	0	0	0
Hawaii [1]			
Idaho	0	0	0
Illinois	18	626, 218	395, 099
Indiana	3	167, 431	77, 999
Iowa	0	0	0
Kansas	2	103, 438	21, 586
Kentucky	1	55, 212	25, 513
Louisiana	0	0	0
Maine	1	3, 573	2, 667
Maryland	2	197, 637	128, 194
Massachusetts	1	94, 174	29, 674
Michigan	7	364, 332	213, 688
Minnesota	0	0	0
Mississippi	0	0	0
Missouri	6	195, 258	112, 312
Montana	1	2, 311	2, 040
Nebraska	1	62, 431	12, 475

TABLE II-C.—CATEGORY III ELIGIBLES EXCLUDING DISTRICTS ELIGIBLE UNDER CATEGORY I, BY STATE—Con.

State	Number of districts	Total enrollment	Minority enrollment
Nevada	1	67, 526	10, 803
New Hampshire	0	0	0
New Jersey	13	222, 519	155, 123
New Mexico	46	171, 360	98, 330
New York	8	1, 208, 022	655, 962
North Carolina	0	0	0
North Dakota	1	692	358
Ohio	10	572, 123	233, 340
Oklahoma	1	154, 717	29, 832
Oregon	0	0	0
Pennsylvania	9	389, 382	221, 911
Rhode Island	0	0	0
South Carolina	1	40, 122	18, 735
South Dakota	5	14, 335	12, 976
Tennessee	0	0	0
Texas	117	466, 870	304, 783
Utah	0	0	0
Vermont	0	0	0
Virginia	0	0	0
Washington	2	95, 080	17, 357
West Virginia	0	0	0
Wisconsin	2	130, 807	35, 534
Wyoming	4	1, 468	1, 240
Total	392	8, 133, 000	3, 812, 000

[1] Data for Hawaii were not available.

III. Extent of Problem in Regard to Minority Students

TABLE III–A

A. The National Picture[1]

Of the 43.4 million students in elementary and secondary schools in the United States, 8.7 million (20%) are minority students (Negro, Spanish-surnamed, American Indian, Oriental).

	Total number of students (in millions)	Percent of total students
United States	43. 4	100. 0
White	34. 7	80. 0
Minority	8. 7	20. 0
Negro	6. 3	1. 45
Spanish-surnamed	2. 0	4. 6
Other	. 4	. 9

TABLE III–B

B. Extent of Racial Isolation In Nation

Of the 8.7 million minority students in elementary and secondary schools across the United States: 4.2 million, or almost 50 percent, are in schools whose student populations are 95 percent or more minority students; 3.3 million, or about 37 percent, are in schools whose student population is 99 percent or more minority students.

---

[1] Except where otherwise indicated, all numbers are from Department of Health, Education, and Welfare, Office for Civil Rights, 1968–1969 Survey of Ethnic Data on Public Schools.

MINORITY PUBLIC SCHOOL CHILDREN FOR ENTIRE UNITED STATES

[Total number: 8,700,000]

Percent of minority children in school	Number (millions)	Percent of total minority
50 to 100 percent	6.1	70
80 to 100 percent	5.0	57
95 to 100 percent	4.2	48
Over 99 percent	3.3	37

TABLE III–C

C. Problem by region

Of the 8.7 million minority students in elementary and secondary schools in the United States: 4.4 million are in the 32 northern and western states, 61 percent in schools 50 percent or more minority; 4.3 million are in the 17 southern and border states,[1] 77 percent in schools 50 percent or more minority; 4.1 million are in the 100 largest school districts, 38 percent of all the students in the 100 largest school districts are minority students, of these, 83 percent are in schools 50 percent or more minority.

---

[1] The 17 southern and border states include: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, Delaware, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.

TABLE III–D

D. Problem by region

There is also the heaviest concentration of minority students in predominantly minority schools in the 17 southern and border states:

Percent minority children in school	Number of minority children in minority schools (in millions)		Percent of total minority children in region in minority schools		Percent of total minority children in United States in minority schools	
	32 Northern and Western States	17 Southern and border States	32 Northern and Western States	17 Southern and border States	32 Northern and Western States	17 Southern and border States
50 to 100	2.8	3.3	61	77	31	38
80 to 100	2.0	3.0	45	70	23	34
95 to 100	1.4	2.8	32	65	16	32
99 and over	.9	2.4	20	58	10	29

Mr. McLane. These tables that have just been distributed are in support of the legislation and provide some of the factual base that led us to this legislation in the first place.

I would like, if we could, to turn to table I, titled "Allocation Under Alternative Funding Levels, by State." I want to point out here that table I represents two-thirds of the funds, as the Secretary pointed out in his statement, two-thirds of the funds would be allotted among the States, one-third of the fund would be discretionary funds.

Now this two-thirds would be allotted among the States which would allow the districts within each State to apply up to the level of funds allotted to that State. That is just the two-thirds allotment. Also, States will receive a minimum of $100,000, and then will receive an amount bearing the same ratio as the minority group children or the number of minority group children in the district, carrying out a plan of desegregation under a court order issued in the last 2 years or with a plan meeting the requirements in title VI, adjusted to the total number of the minority students in the United States.

I think it is important to point out, again, that this is two-thirds of the funds and that it is allotted along the States and the district will apply up to that allotment.

Table II, which summarizes the districts that are eligible under categories I, II, and III, the number of districts, the total enrollment in terms of students, and the minority enrollment. Category II districts, as the Secretary pointed out, are those districts having one or more schools in which minority pupils exceed 50 percent of the enrollment or one or more schools with substantial but less than 50 percent minority enrollment which are in clear danger of becoming racially isolated or what we call the tipping situation.

Tables II–A, II–B, and II–C are the detail tables supporting that summary table on the first page which goes State by State, giving the number of districts falling within these criteria. What is important to point out here is that in tables II–B and II–C, you will see zeros. What we have tried to do is to reduce the overlap for clarification, so that tables II and III do not overlap with table I.

Table III and its supporting tables are the extent of the problem with regard to minority students. As you can see, in the national picture of the 43.4 million total students, 8.7 million are minority students; 6.3 million are Negro; 2.0 million are Spanish surnamed; and 400,000 are Indians, Oriental, and other students.

The B table, the extent of racial isolation in the Nation, what we have tried to point out here is to show still how many minority students there are that are in heavily minority dominated schools. As you can see, 4.2 million students or 48 percent of the total minority students are in schools that are 95 to 100 percent minority students.

Table C shows of the 8.7 million minority students, 4.4 million are in the 32 Northern and Western States; 4.3 million are in just 17 Southern and border States. Also, 4.1 million are in the 100 largest school districts of which about 55 are in the 17 Southern and border States.

And the last table shows the concentration of minority students in predominantly minority schools. Again, as the Secretary pointed out in his statement, the number of minority children in minority schools, you have 2.8 million that are in the 17 Southern and border States, 1.4 million that are in the Northern and Western States, that is in the 95 to 100 percent minority schools. As you can see in the next table and in the last table, the percentage of the total minority children in the United States which are in minority schools, 16 percent are in the 32 Northern and Western States, 32 percent are in the Southern and border States.

I would like this entered into the record.

ADMINISTRATIVE DISCRETION

Senator PELL. Thank you very much, Mr. Secretary.

It seems to me that to reserve one-third of the moneys as discretionary funds for the Secretary is very generous and almost without precedent in Government. This does not indicate a lack of faith in you or Mr. Veneman, but I was wondering if you could give us what your guidelines would be for that one-third? I would add my own view, that I think it is too generous.

Secretary FINCH. This business of secretarial discretion I have found to be a troublesome thing during my tenure. I have reservations about it. But the alternative is to move to a formula grant or title I kind of situation, where we are spreading around not enough dollars in a formula way as we do in title I. As Mrs. Ruby Martin, one of Mr. Pottinger's precedessors, pointed out, we are not getting the impact that we should. In fiscal 1968, title I moneys resulted in about $68 per child. So then we struggled with a great many possible legislative kinds of formula. We were trying to reach out for criteria and we found such disparity between the States in terms of allotments and entitlements, that it was very hard to put a Federal template on.

So that we came down finally because of the immediacy of the problem on the formula that we have indicated for the two-thirds and then felt that within this 2-year period you would have enough experience so that the Secretary could then effectively respond probably and hopefully into the de facto segregation, with concentration in areas where what we have learned in the first year could be applied effectively in the second year.

Senator Pell. What would be the effect of eliminating the discretionary fund entirely, passing the funds entirely on the basis of the formulas?

Secretary Finch. We would lose what we are trying to do here to achieve the concentration in the districts that are, first of all, being pushed under the court orders and under our agreements and under title VI. And it would also make it hard for us to replicate in other areas where we find something that works. I think we would be locked back into a straight compensatory program or a title I or impacted aid kind of thing where we are spreading few dollars into many directions.

Senator Pell. This subcommittee and the full committee was very proud of the ESEA amendment just passed.

Secretary Finch. I am not being critical of that. I am simply saying that the criterion under that act was poverty, and our criterion here is to try to ease the problem and encourage desegregation.

UTILIZATION OF EXISTING STATUTORY AUTHORITY

Senator Pell. But it does have well beefed-up funding for title III and perhaps title I.

Why could not the same results be achieved using the authorization without creating perhaps the dangerous pretense of an emergency body of legislation for an emergency that will probably be around for a long time.

Secretary Finch. If we were to achieve the same impact, title I would have to go up to about $4 billion, Mr. Chairman, and again would be spread across the country. We are conceding that we are trying to rifle the shot here and get the areas of real need.

Senator Pell. It has been pointed out to me by my staff that the authorization for title I this year was a little over $4 billion.

Secretary Finch. This would be $8 billion; I am talking about an additional $4 billion to achieve the same result.

Senator Pell. I think we are very wrong, philosophically, to think that this is an emergency problem. After those 2 years are up we shall have to look at the problem again. I think we are going to have the problems of segregation in schools going on for a long time. I would hope not, but I would think so.

Secretary Finch. But we think we can learn, both the administration and the Congress together can learn, a great deal that we haven't been able to achieve under the existing programs, tied as they are to the poverty level.

MAINTENANCE OF FUNDING LEVEL

Senator **Pell.** Another immediate problem comes before us in the question of the $150 million you are requesting right away. I know of a variety of other programs which are underfunded and I was wondering if they are going to be cut even more.

Secretary **Finch.** This is a supplemental. This is an addition. We are doing it under five categories of existing HEW programs and one under OEO. And the message and the bill specifically provides that, no dollars would come out of existing educational programs.

Senator **Dominick.** Would the Chair yield?

Senator **Pell.** Yes; I will yield to Senator Dominick.

Senator **Dominick.** Do I understand, then, that we are dealing with a supplemental request for additional funds for this particular bill?

Secretary **Finch.** There are two parts to this, Senator.

Senator **Dominick.** I understand that, but the $150 million——

Secretary **Finch.** The first is a $150 million supplement.

Senator **Dominick.** Those will be additional funds, subject to appropriation?

Secretary **Finch.** Yes, sir; and they deal directly to the de jure situation in the first category.

Senator **Dominick.** And you plan on using that $150 million only on de jure situations?

Secretary **Finch.** Yes; to meet this acute problem with the deadline that we hit this fall. That, we think, will bring us up very close, well above the 90 percent level in integrating formerly all white school systems.

BUDGET COMMITMENT

Senator **Javits.** Would the Chair yield for a clarification on the funding?

Senator **Pell.** Yes, Senator Javits.

Senator **Javits.** What do you say about what the budget requests for the use of the whole $1.5 billion? In other words, are we dealing with a realistic situation where the administration is really going to provide for this money in its budget?

Secretary **Finch.** We made that commitment and we have the commitment from the Bureau of the Budget with respect to 1972.

Senator **Javits.** We are talking about real money now, not just an authorization which may then get knocked on the head by the administration itself through its budget requests?

Secretary **Finch.** That is correct.

Mr. **Veneman.** I should elaborate and point out that the $150 million that was in the supplemental request does use the five authorities that are under HEW, in one way or another, including title IV of the Elementary and Secondary Education Act, plus $100 million of that would be through the authority of OEO. The President has firmly committed in his statement that the $500 million would in fact be spent this year and $1 billion next year.

Secretary **Finch.** And I think the fact that the Appropriations Committee last night passed out the supplement is an indication to your regard.

Senator **Dominick.** Would the chairman yield?

Senator **Pell.** Yes.

Senator **Dominick.** The $150 million, as I understand it, is going to be used under existing legislative authority, ESEA and OEO, is that correct?

Secretary FINCH. I will give you a breakdown on exactly how that will go on. We will put it in the record.

Senator DOMINICK. That doesn't concern me. But the $350 million additional and the $1 billion would be used under the terms of this bill?

Secretary FINCH. That is correct.

Senator DOMINICK. So it would be different than the original $150 million?

Mr. VENEMAN. It would differ only in this respect: We felt that in order to take care of the problems that exist with these 1,000-plus schools districts that are facing desegregation for the first time this fall, that it would be probably unwise to wait for the enactment of this particular legislation. And it is for this reason that we asked for the $150 million supplemental, using existing authority attempting to accomplish the same basic purposes that this measure proposes to accomplish and actually have the money expended this summer when the teacher training does have to take place, teacher aides have to be trained, when certain minor remodeling repairs have to be done in the school districts in the 17 southern and border States. Now, these would all be under the first category that the Secretary described.

Secretary FINCH. We will enter into the record the breakdown of that.

Senator SPONG. Since we have been discussing the $150 million to be used this summer, I would like for the Secretary to be a little more specific about the use and distribution of these funds. Senator Dominick, you said you didn't want to go into that, but I think we need to go into it. I would like some idea of the criteria to be used insofar as the distribution is concerned and of the specific purposes for which you intend to use the funds.

Secretary FINCH. The same criterion that is spelled out in section 8. And I will be happy to read that. Of course, so we understand what the source of these categorical programs, you have got $100 million from the Economic Opportunity Act, title II–B, that is the community development money; you have got the technical assistance, $15 million, under Civil Rights Act, title II; you have got $15 million major Demonstrations Research Act; you have got $9 million under the EPDA, part D, personnel development; you have got $4 million under planning and evaluation, Elementary and Secondary Education; and $2 million for salaries and expenses out of the Office of Education. That is how it breaks down.

We will also enter into the record the kinds of things, four pages, administrative planning we are talking about, rerouting transportation, rescheduling students in classes, temporary supervisors. Many of these schools need more help, teachers in the classrooms, staff for planning. There is no new construction money in here. We just couldn't possibly build new schools. But we can remodel, we can take desks that were built for 12-year-olds and lower them so that they could be used by younger children or make repairs in lavatories and that kind of thing. Curriculum development, student services, work studies. We will enter this full list in the record. But it is all these supportive programs, Senator.

Senator SPONG. Thank you.

(The information subsequently supplied follows:)

43

Justifications of Supplemental Appropriation Estimates for Committee on Appropriations

Emergency School Assistance for 1970

U. S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

Appropriation Estimate

EMERGENCY SCHOOL ASSISTANCE

For providing emergency assistance to desegregating school districts under part D of the Education Professions Development Act (title V of the Higher Education Act of 1965), the Cooperative Research Act, title IV of the Civil Rights Act of 1964, section 807 of the Elementary and Secondary Education Act of 1965, section 402 of the Elementary and Secondary Education Amendments of 1967, and title II of the Economic Opportunity Act of 1964, as amended, including necessary administrative expenses therefor, $150,000,000 to remain available until September 30, 1970: Provided, That funds appropriated to carry out programs under title II of the Economic Opportunity Act of 1964 shall not be subject to those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels: Provided further, That funds appropriated for administrative expenses shall remain available until June 30, 1971."

Explanation of Language Change

The proposed language is necessary to establish the new appropriation "Emergency School Assistance." The proposed language authorizes funds to support the emergency needs of the 994 school districts which are in the process of desegregation.

Office of Education

Emergency School Assistance

Amounts Available for Obligation

	1970 Presently Available	1970 Revised Estimate	Increase
Appropriation............................	---	$150,000,000	$150,000,000

Obligations by Activity

	1970 Presently Available Pos.	Amount	1970 Revised Estimate Pos.	Amount	Increase Pos.	Amount
1. Special educational personnel and programs..........	---	---	---	$115,000,000	---	$+115,000,000
2. Community participation programs...	---	---	---	15,000,000	---	+ 15,000,000
3. Equipment and minor remodeling........	---	---	---	17,900,000	---	+ 17,900,000
4. Federal administration and technical assistance........	---	---	100	2,100,000	+100	+ 2,100,000
Total obligations.	---	---	100	150,000,000	+100	+150,000,000

Office of Education

Emergency School Assistance

Obligations by Object

	Presently Available	Revised Estimate	Increase
Total number of permanent positions...	---	100	100
Full-time equivalent of all other positions..........................	---	12	12
Average number of all employees.......	---	97	97
Personnel compensation:			
Permanent positions.................	---	$1,200,000	$1,200,000
Positions other than permanent......	---	100,000	100,000
Other personnel compensation........	---	---	---
Subtotal, personnel compensation.	---	1,300,000	1,300,000
Personnel benefits....................	---	97,000	97,000
Travel and transportation of persons..	---	313,000	313,000
Rent, communications and utilities....	---	207,000	207,000
Printing and reproduction............	---	42,000	42,000
Other services.......................	---	77,000	77,000
Supplies and materials...............	---	14,000	14,000
Equipment............................	---	50,000	50,000
Grants, subsidies and contributions...	---	147,900,000	147,900,000
Total.....................	---	150,000,000	150,000,000

Summary of Changes

1970 enacted appropriation	---
1970 revised estimated obligations	$150,000,000
Total changes	+150,000,000

Increases

Program:

Special educational personnel and programs	$115,000,000
Community participation programs	15,000,000
Equipment and minor remodeling	17,900,000
Federal administration and technical assistance	2,100,000

Explanation of Changes

The President, in his message of May 21, 1970, to the Congress of the United States, proposed the Emergency School Aid Act of 1970. Under the terms of this Act, funds would be used to assist local school authorities in meeting special needs incident to both de jure and de facto segregation.

The $150,000,000 requested in this supplemental appropriation, to be used under existing authorities, will provide immediate assistance to the approximately 994 de jure school districts in the 17 southern and border States which have recently developed or which must develop total desegregation plans by September 1970.

48

Emergency School Assistance

Introduction

On March 24, 1970, the President of the United States issued a statement entitled "School Desegregation: A Free and Open Society". In clearly establishing the policies of his Administration in the areas of school desegregation and in restating his firm dedication to equal educational opportunity, the President added the following commitment.

> "Words often ring empty without deeds. In government, words can ring even emptier without dollars.
>
> In order to give substance to these commitments, I shall ask Congress to divert $500 million from my previous budget requests for other domestic programs for fiscal year 1971, to be put instead into programs for improving education in racially impacted areas, North and South, and for assisting school districts in meeting special problems incident to court ordered desegregation. For fiscal year 1972, I have ordered that $1 billion be budgeted for the same purposes."

In this same message, the President directed a cabinet-level committee chaired by the Vice President of the United States to develop plans for the effective use of such funds as may be appropriated by Congress in response to his recommendation. One outcome of the efforts of this committee and of the Department of Health, Education, and Welfare, has been a bill requesting Congress for an authorization totaling $1,500,000,000 over fiscal years 1971 and 1972. It was realized, however, that final action on these proposals could not be completed in time to deal with the most pressing problems of school districts which have been desegregating this year or are faced with desegregation in September 1970. These districts have much work to do and many preparations to make this summer and are in need of financial assistance. To meet the emergency needs of such school districts, the President has proposed that Congress appropriate $150 million under six existing legislative authorities to be made available immediately to school districts undergoing desegregation.

Dimensions of the problem

In the 17 southern and border States there are some 4,500 school districts, of which 994 are in the process of desegregation. These include some 220 school districts now under court order calling for complete desegregation by this September, 496 districts, which have submitted, are negotiating or are likely to be negotiating desegregation plans under the Department of Health, Education, and Welfare auspices for total desegregation by September; another 278 districts which will be operating under total desegregation plans implemented in 1968 and 1969.

Selection of appropriate authorities

In recognition of the immediate financial needs which desegregation places upon these 994 school districts, the $150 million being proposed for immediate financial aid is requested under six existing legislative authorities which are:

1. Community development programs:

Economic Opportunity Act of 1964, Title II, Urban and Rural Community Action Programs. This title's purpose is to help focus available local, State, private, and Federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas, to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become fully self-sufficient. Presently funded under this authority are Headstart and Follow Through, among others.

2. Personnel development programs:

Education Professions Development Act, Part D, Improving Training Opportunities for Personnel Serving in Programs of Education Other Than Higher Education. Programs or projects under this part are funded to improve the qualifications of persons serving or preparing to serve in educational programs in elementary and secondary schools (including preschool and adult and vocational education programs) or postsecondary vocational schools or to supervise or train persons so serving.

3. Major demonstrations:

Cooperative Research Act. This Act authorizes projects for research, surveys, and demonstrations in the field of education, and for the dissemination of information derived from educational research.

4. Dropout prevention:

Elementary and Secondary Education Act, Section 807. This section authorizes demonstration projects involving the use of innovative methods, systems, materials, or programs which show promise of reducing the number of children who do not complete their education in elementary and secondary schools.

5. Technical assistance:

Civil Rights Act of 1964, Title IV. This title authorizes rendering technical assistance to school boards in the preparation, adoption, and implementation of plans for the desegregation of public schools.

6. Planning and evaluation:

Elementary and Secondary Education Act Amendments of 1967, Section 402. This section authorizes grants, contracts or other payments for planning and evaluating any programs for which the Commissioner of Education has responsibility for administration.

These particular authorities were selected because they met the following criteria:

- focus on elementary and secondary education
- can be used for student and teacher services
- are discretionary authorities
- do not have formulas which would channel funds away from areas of greatest need
- are designed to support and encourage demonstration activities
- are flexible in the range of activities which can be approved
- are clearly related and appropriate to the needs of school districts undergoing desegregation
- have authorization levels which are sufficiently above current levels of appropriation to permit additional appropriations.

Activities to be supported

To minimize disruption of the educational process and to maintain quality education during the change to a unitary system, a vast array of vital activities must be supported. Teachers need to be trained and made aware of the skills required to teach effectively in integrated classrooms. Teacher aides must be employed and trained to maximize instructional activities for students who may need to catch up academically. Guidance, counseling and testing programs must be redesigned and updated to serve new needs. New and innovative instructional approaches must be designed, including remedial, tutorial, work-study, and bilingual programs, if overall educational quality is to be maintained and enhanced. Community information and communication programs that develop and build confidence in the public education system and promote understanding and acceptance must be designed, staffed and implemented. In addition, facilities must be modified to accomodate school consolidation.

Office of Education
Emergency School Assistance

	1970					
	Presently Available		Revised Estimate		Increase	
	Pos.	Amount	Pos.	Amount	Pos.	Amount
1. Special educational personnel and student programs.....	--	---	--	$115,000,000	--	$+115,000,000
2. Community participation program..............	--	---	--	15,000,000	--	+15,000,000
3. Equipment and minor remodeling...........	--	---	--	17,900,000	--	+17,900,000
4. Federal administration and technical assistance...........	--	---	100	2,100,000	+100	+2,100,000
Total obligations...	--	---	100	150,000,000	+100	+150,000,000

General Statement

School districts will be encouraged to review carefully the local problems anticipated during the desegregation process, identifying programs and resources to overcome their problems. Funding will be based upon each district's needs rather than a standard program. School districts will be required to carefully plan their programs and build in evaluation components designed to assess the program's effectiveness in meeting stated objectives. State and Federal personnel will be available to provide assistance in the identification of problems, the development of program requirements, and the management of the program.

The following estimates by program activity represent a rough approximation of how the supplemental request will be used. It is based upon the judgements of present Office of Education staff who have been working closely with southern school superintendents. Although needs will vary from one school district to another, it is expected that approvable projects will need to be both large enough and comprehensive enough to make a difference. If the objective of this program--to maintain quality education during desegregation--is to be realized, projects will have to be multi-faceted. Community participation, special personnel and services, administrative and logistical help, and technical assistance are all important elements of a successful program.

A supplemental appropriation of $150 million would provide an average of $150,000 for each of the approximately 1,000 eligible school districts. Assuming an average of 10 schools per school district, this would mean about $15,000 per school.

In total, the target population includes about 7.2 million students, of whom 2.5 million are minority students,and approximately 335,000 educational personnel.

	Presently Available	Revised Estimate	Increase
1. Special educational personnel and student programs..........	---	$115,000,000	$+115,000,000

The following activities would be supported:

A. Special personnel

--- Temporary teachers - to provide release time for regular instructional personnel to participate in desegregation workshop activities.

--- Teacher aides - to reduce pupil-teacher ratios in order to give more attention to individual students.

--- Special guidance and counseling and testing staff - to assist and counsel principals, teachers, and students in order to provide educational programs that will remedy student deficiencies.

--- Monitors - parents in the school community to preform services that will reduce potential behavioral problems on school buses and school grounds.

--- Crossing guards - to provide staff that will maximize safety precautions for children who may be taking new and different routes to school.

--- Administrative and clerical staff - to provide additional personnel and time for implementation of desegregation plans, e.g., additional month of employment during summer for principals.

B. Student services

--- Remedial programs - to provide specialists, books and supplies for remediation in allsubject areas in which students are deficient.

--- Guidance and counseling - to provide adequate guidance and counseling staff in order to deal with student adjustment problems resulting from the desegregation process.

--- Diagnostic evaluation and testing programs - to provide diagnosticians trained to evaluate special sight, hearing and psychological problems of students.

--- Work-study programs - to provide children from poverty level families with specially-designed school programs that would afford them financial assistance so as to continue their education.

--- Health and nutrition services - to provide specialized personnel and services for students having health and nutrition deficiencies.

--- Dropout prevention programs.

--- Student relations - to provide special programs designed to assist students on problems such as acceptance, behavior, dress codes, etc.

C. Educational personnel development

--- Seminars on problems incident to desegregation - to provide training with skilled experts in the area of human relations so as to minimize problems incident to desegregation.

--- Seminars on teacher interpersonal relationships - to facilitate positive interpersonal relations among educational personnel through training by skilled professionals in an intercultural understanding.

--- Utilization of university expertise through institutes and inservice programs to deal with such problems as:

Teaching bilingual children

Teaching children with speech and dialect deficiencies

Attitudes and problems of teachers, parents and students involved in the desegregation process

Upgrading basic skills and instructional methodologies of teachers in English, math, science, social sciences, language arts, etc.

D. Curriculum development

--- Utilization of expert consultants to shape and design new curricula approaches and to introduce curriculum innovations that would serve children with multi-ethnic backgrounds.

--- New and varied instructional materials

--- Improved evaluation and assessment of student progress.

E. Special demonstration projects

--- Projects for introduction of innovative instructional methodologies which will improve the quality of education in the desegregated school:

Individualized instruction

Master teachers

Team teaching

Non-graded programs

--- Special projects involving community agencies and parents - to develop joint projects between special-interest and civic groups, parents and the schools which would promote understanding among citizens. Such projects could include sponsoring citywide and countywide art and music festivals, public meetings on relevant school problems (drug abuse, behavior, etc.).

--- Exemplary instructional practices - to operate pilot projects which would demonstrate exemplary instructional practices suitable for systemwide replication and for other school districts involved in the desegregation process.

F. State and local planning and administration

--- Expand technical assistance capabilities at the State education agency level - to provide additional personnel to assist the local education agency in planning for desegregation.

--- Temporary staff at the local level to handle administrative details and clerical duties - to provide additional temporary staff to deal with the logistics of changing from a dual to a unitary system. For example, rescheduling of students and teachers, redrawing transportation routes, supervision of necessary physical changes (moving of equipment, building renovation, etc.).

--- Staff at the local level for planning and supervising the implementation of the desegregation plan.

	Presently Available	Revised Estimate	Increase
2. Community participation programs..	---	$ 15,000,000	$ +15,000,000

The following activities would be supported:

A. Public information activities

--- Community information programs for parents, teachers, and students - to provide factual information about the desegregation plan and school programs.

--- Public information coordinator - to provide for a person on superintendent's staff to promote public information activities.

B. Community programs

--- Establishment and support of a biracial committee.

--- School-home visitation programs - an activity to be performed by educational personnel to assist with dissemination of information about school programs and student progress in the desegregated school.

--- Special parent programs - to provide programs designed to increase parents' involvement with the schools' programs, i.e. PTA, Education Emphasis Week, etc.

--- Community-relations coordinator - to provide a person on superintendent's staff to plan, organize and implement programs for students and parents involved in the desegregation process.

--- Special demonstration projects designed to keep communication open, build understanding and develop community support.

	Presently Available	Revised Estimate	Increase
3. Equipment and minor remodeling....	---	$ 17,900,000	$ +17,900,000

The following activities would be supported:

--- Procurement and relocation of temporary classrooms (trailers, mobile facilities and demountables).

--- Procurement and relocation of equipment and classroom funiture, including replacement of obsolete items.

--- Minor building renovation and remodeling for general upgrading of a facility including painting, modernizing, and partitioning.

	Presently Available		Revised Estimate		Increase	
	Pos.	Amount	Pos.	Amount	Pos.	Amount
4. Federal administration and technical assistance:						
Personnel compensation and benefits..........	---	---	100	$1,397,000	+100	$+1,397,000
Other expenses...........	---	---		703,000		+ 703,000
Total..............	---	---	100	2,100,000	+100	+2,100,000

An amount of $2.1 million and 100 positions is requested to administer the Emergency School Assistance Program. This new effort will require:

-- Developing entirely new procedures and regulations which will allow the Office of Education to administer a unified, coordinated program within the six separate authorities under which funds are being requested. This will include notices to potential grantees of the terms and conditions under which grants will be available, unified application forms, regulation notices in the Federal Register, and review, approval, award and accounting procedures.

-- Assisting schools and other interested parties in the development of applications.

-- Reviewing and monitoring an estimated 1,000-1,500 projects for assistance.

-- Providing program assistance and disseminating information to hundreds of State and local school officials.

In addition to these direct program services, a small supporting staff will be necessary in Washington and the regional offices to coordinate program activities, provide general guidance and other necessary administrative functions such as accounting, grants management and personnel.

Of the 100 additional positions requested, 82 will be professional staff and 18 will be secretarial and clerical positions. Eighty-one will be located in the three southern HEW regional offices with 19 in Washington, D. C.

The additional professional positions are required for the following specific purposes:

Project development, review, monitoring and evaluation........ +50 positions

Fifty education program specialists will be required to handle the several phases of the some 1,000 project applications anticipated. This will mean that each specialist will be handling approximately 20 projects of varying size and scope. Because of the short lead-time involved and the unfamiliarity of many of the target school districts with developing proposals, it is expected that this workload will be quite demanding and fully justify the additional staff requested. Program specialists will need to go out and talk with local school officials, inform them of the assistance available, help them develop acceptable applications, help them with devising educationally sound programs, help with the installation of evaluation components and finally, monitor projects throughout the year, helping to make modifications as plans change and programs develop.

Development of program guidelines, program models and evaluation techniques.. +12 positions

Twelve program development specialists will help develop materials which can be used by education program specialists in working with local school officials. This will include information on successful projects in other States and communities. The program guidelines and models will indicate, for example, what goes into making a successful guidance and counseling program, bilingual education program, special reading program, etc. These specialists will be educators who have a sound background in these special fields.

Developing uniform grant and contract terms and conditions......... +8 positions

Eight specialists will be required to help develop common rules and regulations for the award of grants and contracts. These will include such subjects as the disposition and accountability of equipment, determination of allowable costs, etc. This is an extremely important task in view of the several legislative authorities involved. It will be important to develop a common set of rules which will satisfy all the authorities involved.

Management and administrative overhead............................ +12 positions

The above staff will in turn require certain central support in both the regions and Washington. This will include persons in administrative services, accounting, personnel operations, and management. Eight of these positions will be in the regional offices.

It is important to emphasize that while certain minimum Federal requirements on accountability of funds and other matters must be met by all school districts, the program assistance and development will be strictly optional at the discretion of local school officials. There is no intention of having the Office of Education offering gratuitous advice. It is expected, however, that many schools will welcome whatever help is available. Many of the staff involved will be drawn from the local region and will be selected for their judgement, maturity, and experience as well as professional competence.

Even though the program funds will have to be obligated by September 30, 1970, most projects will probably continue throughout the school year. For this reason, a special provision has been included in the appropriation language which will make funds for administrative activities available through June 30, 1971. To launch this program as soon as possible, it is expected that some existing staff will be diverted to start up the program. For this reason, it is expected that the 100 new positions will be on board for approximatley 85 percent of the fiscal year.

Administrative funds for Emergency School Assistance Program

Personnel Compensation:	
Permanent	$1,200,000
Positions other than Permanent	100,000
Other Personnel Compensation	---
Sub-total, Personnel Compensation	1,300,000
Personnel Benefits (7.5%)	97,000
Travel and Transportation of Persons (71 employees X $50 per diem X 90 days)	313,000
Transportation of things	---
Rent, Communication and Utilities	207,000
(GSA - 100 employees X $900 lapsed 15%)	(77,000)
(Utilities - 100 employees X $1,300)	(130,000)
Printing and Reproduction (100 employees X $420)	42,000
Other Services (100 employees X $900 lapsed 15%)	77,000
Supplies and Materials (100 employees X $140)	14,000
Equipment (100 X $500)	50,000
Total	2,100,000

Total number of permanent employees	100
Full-time equivalent of others	12
Average number of all employees	97
Average cost per man year	$ 14,410

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education

Emergency School Assistance

Positions	Number	Grade	Annual Salary
Education Program Officer	5	GS-15	$ 114,425
Education Program Specialist	16	GS-14	314,288
Program Analyst	3	GS-14	58,929
Education Program Specialist	20	GS-13	335,200
Grants and Contract Specialist	1	GS-13	16,760
Education Program Specialist	14	GS-12	198,688
Grants and Contract Specialist	6	GS-12	85,152
Education Program Specialist	2	GS-11	23,810
Management Analyst	2	GS-11	23,810
Grants and Contract Specialist	1	GS-11	11,905
Budget Analyst	1	GS-11	11,905
Education Program Specialist	6	GS-9	59,286
Education Program Specialist	2	GS-7	16,178
Personnel Staffing Assistant	1	GS-7	8,089
Accounting Technician	2	GS-7	16,178
Secretary	5	GS-6	36,470
Secretary	8	GS-5	52,384
Clerk-Typist	3	GS-4	17,559
Clerk-Typist	2	GS-2	9,242
TOTAL	100		1,410,258

Mr. VENEMAN. I think the Secretary pointed out the authority. The specific expenditures we have, all of those things he described will cost—$15 million will be for special educational personnel, for student programs, $15 million for participation programs, $17,900,000 for the minor repairs and remodeling, and $2.1 million would be for the purpose of Federal administration and technical assistance, those would be the people that we have on the Federal level on that.

Senator DOMINICK. Who is going to determine where it goes?

Secretary FINCH. We are not just going to sit here and have a first-come, first-served kind of basis. We have plans to reach out and send these people into the field and encourage them to make out the applications right there, particularly now speaking to the $150 million. So we get these into a basis where we can make judgments as to their comprehensiveness and effectiveness of concentrating those dollars.

Senator DOMINICK. The point I am making is that this is not going to be done on any kind of formula, this is going to be done on the discretion of HEW, is that right?

Secretary FINCH. Yes; or a project grant basis, based upon the long experience that the people in title IV, the Office of Education, have had. They have been living with these districts for some time, so it is not a new experience.

If we had tried to set up a whole new mechanism, you can appreciate we would lose the summer, lose a year's time. So we have to work with the people we have in place on this.

Senator PELL. Thank you.

POLITICAL USE OF THE PROGRAM

I think that in using these funds, particularly the $150 million, if it is appropriated, that you are going to have to be very careful that it not be used for political purposes. This could come up very much in the coming campaign. This is a point we have to wrap up in the hearings before we report it out. I don't quite know how one does that, but with the sharp minds of the committee members I am sure we will.

CONSTITUTIONAL AUTHORITY

There is one other point that bothers me; under the Constitution, as I recall it, and under Supreme Court decisions, Government action that is based on the classification of citizens on the grounds of race is unconstitutional. Now, is it possible that a bill of this sort, which really is based exclusively on racial criteria, can be held unconstitutional? And if that is correct, is there any ground, any way of avoiding it, such as bringing some reference to the 14th amendment into the bill?

Secretary FINCH. That did concern us. We have opinions of both our own General Counsel and the Department of Justice. This criteria is on the basis of educational disadvantage and they assured us that we do not have a legal problem in this connection.

Senator PELL. Disadvantage, but the criteria you are using are minority children and——

Secretary FINCH. Educational disadvantage.

Senator PELL. But you are not using educational disadvantage, you are using the number of minority children. There must be some way of handling this problem, but the present form would seem to me to be unconstitutional.

Mr. **Veneman**. I think, Mr. Chairman, this would probably fall in the same context as the expenditure of title IV money. This is not for the purposes of inducing integration, it is to overcome the effects of past segregation.

Secretary **Finch**. Discriminatory practice.

Senator **Pell**. If my recollection is correct, the Supreme Court decisions turn on the point of Government action based on the race of an individual, and this bill certainly is based on that. So I think we may have to figure some way to phrase this bill.

We have a peculiar system of protocol when we sit in a joint hearing. So I will call on the Senators in the order of seating on the two committees, and apologize to those colleagues who feel that they are being protocoled out of existence.

The first one will be Senator Mondale, who is chairman of the Select Committee and whose committee will give us the advice that we will need in reaching a conclusion as to what to do with this proposal. Indeed, I think there is a preliminary report due in another month or two.

Senator **Mondale**. Thank you, Mr. Chairman, for permitting the Select Committee on Equal Educational Opportunity to meet in conjunction with the Education Subcommittee which has responsibility for this legislation.

Mr. Secretary, throughout the proposed legislation, your supplemental appropriation request and the President's message, we seem to be pursuing an objective that is described as successful desegregation. How do you define that objective? Do you see it as being a different objective than quality integration? If there is a difference, why not pursue a national declared policy of quality integration?

Secretary **Finch**. I think that is what we are attempting to do.

Senator **Mondale**. Would you object to changing the proposal to a declaration of a national policy of quality integration and substituting those words for successful desegregation?

Secretary **Finch**. Well, you mean in terms of the language in the bill.

Senator **Mondale**. Yes. I think it is terribly important that the country have a clear understanding of what our national purpose is.

Secretary **Finch**. I think we would go along with that, because as far as I am concerned desegregation is a term of art and I think it is badly abused in many implications.

Senator **Javits**. I will not take the Senator's time, but when it comes to my turn I would like to lay out this constitutional question. I believe this legislation to be completely constitutional.

Senator **Mondale**. I would agree with the Senator from New York. But I think that we had so many tragic efforts in national education policy that it is terribly important, particularly as it effects race, that we use this opportunity to define it in a precise way which endorses a national objective of quality integration. In other words, that we agree, as Americans, that we are going to begin to be educated together, live together, and treat one another as equals and that is our objective, rather than a negative sort of body mixing.

Secretary FINCH. We are both striving for educational improvement.

Senator MONDALE. I am encouraged to hear you say that you would not object to that change in terminology.

Second, in pursuit of that objective, could not the thrust and guidelines set forth in this proposal be strengthened to make it clear that we are trying to create incentives for quality integration? For example, the legislation is not cast in terms of an incentive to integrate. Most of the money in the legislation and the supplemental appropriations request is going to districts that have been forced to desegregate. Could we not change the emphasis and make more money available to encourage school districts throughout this country to try to integrate wherever they are found? Could we not, for example, have grants in here to encourage interdistrict cooperation?

Secretary FINCH. That is encompassed in category III.

Senator MONDALE. That is cast in terms of maybe having a football game together or something. I am talking about the total educational experience. Wouldn't it be better to encourage support for busing to achieve an integrated experience rather than using the proposal's approach by which funds would be made available only when a district is required to bus to overcome de jure segregation? Wouldn't it be better to have a strong program of community participation, parental participation, integrated student programs and the rest, all spelled out so that we make it absolutely clear that our objective is quality integrated education and that the incentives are to be found there?

Secretary FINCH. I think in some cases you might want stronger language. But we have laid this out with priority among those districts. It is a negative concept, but the courts said they have to desegregate this September and they face these immediate needs. You have also got the next priority for district which recently has been segregated and the big third category. We think we have given them a variety of options.

Indeed, in the House testimony yesterday, they wanted more restrictions built in as to what we should not do. And we conceded that that might be a good thing to be considered with regard to busing, for example, not to use funds to require busing of children solely to overcome racial imbalance, solely to achieve a mathematical racial balance.

Senator MONDALE. Don't all those restrictions reflect a kind of negative concern that there is something wrong about going to school together, about using busing to achieve this objective? Wouldn't it be better to just come out and declare clearly and unequivocally a national policy that it is fundamental to this country that we begin to be educated and live together. Wouldn't it be better for this legislation and this appropriations request to state that purpose, and quit dancing around about when busing could be used. Wouldn't it be better to pursue a funding allocation which required and creates an incentive for quality integrated education wherever it is found? Because under this proposal, two-thirds of the funds are going where one-third of the students are found.

Secretary FINCH. That is not true; 42 percent of the funds will go——

Senator MONDALE. Most of the money is going to where most of the students are not.

Secretary Finch. That is not true.

Senator Mondale. Most of the money is destined for districts under court orders or administrative desegregation orders rather than endorsing an affirmative thrust and rewarding, encouraging a quality integrated experience.

Secretary Finch. Forty-two percent of these dollars will go where 49 percent of the minority students are found. It is clearly close to a 50–50 break.

Senator Mondale. I don't think we should just think in terms of minority students. We should think in terms of students generally. I think there is much to be gained from an integrated school by white children as by minority children and we ought to look at all the figures.

Secretary Finch. I will agree fully. There is only so much we can do with one bill. This is not a national long-term education bill to achieve all of the things you have talked about. We have said this is a 2-year, short-term emergency educational bill.

Senator Mondale. At least I made my point as I see it.

Secretary Finch. Just for the record, it is in section 7–B.

Senator Pell. I take exception to the continuous use of the word "emergency" I think we are discussing a problem which will be with us for some time, I think this bill will set a precedent.

Senator Mondale. My second question deals with the question of guidelines and standards. There is growing evidence that many so-called desegregated schools are, in fact, desegregated in only the most strained, token way. Many of them under a court order, many of them under title 6 compliance regulations. And at least from my reading of your appropriations request and proposed statute, they would be eligible for the entire $150 million request and for the double-count support under the bill. The abuses that we know of, including segregated classrooms within desegregated schools, segregated extracurricular activities, the exclusion of Negroes from athletics, separate bus trips for blacks and whites, exclusion of blacks from student governments, exclusion of blacks from proms, dances, cheerleading, and the rest mean that the only part of the school that is desegregated is the front door.

Another very widespread practice is the transferring and selling of equipment to private schools. We have evidence where school districts have declared their best school building surplus and sold it to a private school for $1,500; where they have, in effect, turned their schoolbuses over to private schools; where they have declared their textbooks surplus and permitted their faculty to teach in private schools; where furniture has been sold as surplus to private schools—in short a pattern of trying to support private, all-white segregated education. And these abuses are occurring in districts that are in technical compliance with court orders and administrative orders.

We find discrimination shown against black faculty; deductions in some State income tax laws to reimburse parents for tuition in segregated institutions, testing and tracking of pupils which results in segregation. Some local communities have reduced millage rates to permit the local community to better finance the private schools that are segregated; some have fired and demoted black teachers.

We have seen these abuses in school districts which are in technical compliance with court orders or title VI regulations and which presumably would be entitled to aid under both parts of this proposal—the appropriation request and the proposed bill.

Now, would you respond to that and indicate in what ways HEW will act to prevent this money from being made available to districts engaging in these kinds of practices?

Secretary FINCH. Well, I think we would concede the abuses you have listed. What we are trying to do is attack those abuses through title VI. We are seeking to obtain an increase both in personnel and money. I think to start listing in the legislation itself the prohibitions of the kind you have just described, would go back to your earlier point of putting a great many negative things into the body of the legislation itself.

And whether these districts were found to be in compliance under title VI, under earlier administration, or in a cosmetic way, or are now, we, under no circumstances, will fund districts out of compliance with title VI—those who fire or demote anyone on the basis of race or with segregated classrooms or other basic things that you mentioned.

Senator MONDALE. Let me read a description of a school district that is currently under a court order. The students are segregated within the desegregated high school; white students are in one wing and black students are in another wing. There is a dual system of bells so that the whites and blacks do not mix in the corridors or during lunch or recreation periods. Blacks are taught by black teachers, except that a white coach teaches segregated gym classes.

Secretary FINCH. When was it found to be in compliance, do you know?

Senator MONDALE. It is under court order now. It is Kemper County, Miss. Would that school district under your proposed bill be technically qualified?

Secretary FINCH. I would say no. I think I should have a man who lives with this all the time speak to this.

Mr. Pottinger?

Mr. POTTINGER. Senator, let me say that the abuses that you have just outlined are in violation of title VI of the 1964 Civil Rights Act. Because that particular district is a court order district, the Department of Health, Education, and Welfare does not have jurisdiction over it. But let me say that the Justice Department does have jurisdiction to act in that case. Although I cannot speak for that Department, I believe it is fair to say that abuses of that nature, when brought to their attention, would be acted upon by Justice.

Senator MONDALE. Is there a lawsuit pending in his case brought by the Department of Justice?

Mr. POTTINGER. I am not sure of the answer to that.

What particular case this is, I am not aware.

Senator MONDALE. Kemper County, Miss.

Mr. POTTINGER. But the point I was trying to make is in this particular case, as with similar cases throughout the South, the Justice Department does have the authority to intervene, based upon the 1964 act.

Senator MONDALE. We are now talking about how the HEW will apply these funds. This is a district which I understand to be in compliance with the Federal district court order. Would this district be technically eligible for funding under the bill or the appropriations request you presented to the Congress?

Secretary FINCH. No; because it would not meet the requirements of title VI.

Senator MONDALE. Would you object if we spelled out in our legislation a series of standards which prevented the funding of districts which were in such technical——

Secretary FINCH. As I tried to spell out before, I think we get back to the same old problem of how much delegation you want to give the administration and how much you want to weight down the legislation with many criteria.

Senator MONDALE. Doesn't your bill say either court compliance or title VI compliance? In other words, it is in the disjunctive; is it not?

Secretary FINCH. A Federal court. Under the procedure we have been following, the court requires or asks the title IV people to come in and lay down the criteria which are essentially the same as title VI. That has been our practice since we have been in office.

Senator MONDALE. The responses leave me uneasy. And I think if we start funding these kinds of districts, what we are really doing is spending money to enforce segregation.

Mr. POTTINGER. May I suggest that one of the approaches that we would attempt to take here would be, through title VI reviews and through the complaint procedure, would be to ask the Justice Department to update court orders which, as I said a moment ago, they have the power to do under title IX of the Civil Rights Act. If indeed segregation activities were taking place or were implemented despite the court order, even though technical compliance in terms of that court order may be the case, before such funding would take place we would ask for a updating of that court order. I think this would be the correct way to remedy that situation.

Senator MONDALE. These practices to which I refer have been going on for several years and most of them have not been visited by Justice. Are you any more encouraged that you will see a new sense of commitment?

Secretary FINCH. If we get the increase that we have asked for in title VI particularly, and increase in personnel, we are going to go back to a lot of these districts that have been earlier found to be in technical compliance and be able to look at them. We have had a very, very small number of troops in order to cover an awful lot of real estate in a great many school districts.

Senator MONDALE. One final question—I have already taken more time than I should.

There is a very decided pattern, as you know, in many communities to avoid the reach of the court orders, and title VI compliance orders, by establishing private, all white segregated schools. A whole pattern of indirect support techniques have been developed—selling schools, practically giving them away, practically giving away schoolbuses, textbooks, lending teachers, and at the State level giving indirect support or direct subsidy support by local school districts reducing millage on the public schools and then taking Federal funds to make up the difference. And now apparently the position of the Justice Department is that it is perfectly proper to deduct from your income taxes money that you use for tuition in segregated schools in the South. It is not the position of the Justice Department that such indirect support to private schools is a violation.

Unless we take a position that these funds have to go for quality integrated schools, might it not be the case that this $1.5 billion that is going into these school districts might be used to bail out indirectly the financial costs of these private, lily-white segregated schools to which many people are escaping?

Secretary **Finch**. Let me address this to the two broad points, and I would like Mr. Pottinger to refer to the specifics.

First of all, the decision referred to is being reconsidered at the White House. I have spoken against that proposition.

Senator **Mondale**. And I congratulate you.

Secretary **Finch**. And I think an administration position will be announced on that very shortly.

Senator **Mondale**. That would be very helpful.

Secretary **Finch**. Secondly, we have built into this legislation a very strong maintenance of effort. We are not allowing anybody to get off the hook or reduce their State or local support as a result of these dollars being expended.

Mr. Pottinger can speak to the specifics.

Mr. **Pottinger**. Senator, other than the deduction question, which the Secretary just spoke to, I would underscore the Secretary's previous point that we have already announced and are implementing a policy in our office to do a massive monitoring function this fall through title VI reviews in order to not allow any of the abuses that you have mentioned in your list, which do take place, to occur.

Senator **Mondale**. Does this include court order districts?

Mr. **Pottinger**. Yes, sir; it does include court order districts.

Senator **Mondale**. Would you object to us spelling out some of these safeguards in the legislation? If we are going to do it, it wouldn't hurt any just to pin it down.

Mr. **Pottinger**. As a lawyer, my own reaction is to say that it is more appropriate as a matter of administration than to incumber the legislation with it. And I would underscore that even more so in this case, because of the urgency of getting the legislation passed. I think we could all appreciate the detail that will go into those administrative regulations because I am pledging, and I believe the Secretary has pledged, that those administrative guidelines will take place. And I might add that that announcement has already been made sometime ago.

Finally, let me say that with regard to the monitoring function, the abuses that you have spoken of are abuses that, as you know, under the 14th amendment, take place with the official sanction of the actually constituted school boards. In other words, those books or buses or facilities are given to those private schools by the school boards. That is a clear violation of the law.

Senator **Mondale**. And it is going on right now and under this bill, and under the $150 million supplemental appropriations request, they are technically qualified for funding.

Mr. **Veneman**. I would like to point out one significant distinction here between the manner in which this would be administered, as opposed to title I, for example. Under title I, the State school chiefs approve the project grants. This is a project grant proposal based upon need. Priority would be established upon the basis of need and upon the basis of content of the proposal and would be approved here.

And I can't conceive of us not taking any consideration in the manner in which the actual facilities are being operated.

Senator PELL. Thank you.

Senator Prouty, the Senator from Vermont.

Senator PROUTY. Mr. Secretary, yesterday, I believe, the chairman of the General Education Subcommittee in the other House and a Member of the majority party, suggested that they were very much opposed to any funds being used for busing. In your judgment, is he objecting to subsection G of section 6 in the bill introduced by Senator Javits?

Secretary FINCH. That is correct, Senator Prouty.

Senator PROUTY. As I understand that section, it leaves busing to the discretion of the local school boards; does it not?

Secretary FINCH. That is correct. We have laid down the general prohibitions that the Congress has already spelled out for us—that funds should not be used to require busing for children to school to overcome racial imbalance. They would strike, as in the court yesterday, abuse of any of these funds for any busing purposes. That would include an interracial experience between schools on a one-shot, one-hour day or that kind of school thing, but where a local board might decide that such an experience would be educationally productive.

We feel that the local boards should have as many options as possible.

Senator PROUTY. I agree with you. But I wonder if in order to get a bill, the Senate has got to go along with the majority in the other party?

Secretary FINCH. We haven't encountered that yet. We are not that far along, Senator.

Senator PROUTY. I think if we are going to be realistic we should perhaps recognize that this may become the major problem.

Secretary FINCH. I would like the right to retain the option too. The board wants to use a limited amount of busing. The buses are there. As you know, 90 percent of the districts bus; 40 percent of the students in this country in 20,000 districts, are already bused. It just seems to me for us to deny another option and a chance to have an educational experience defeats what we are trying to get at.

Senator PROUTY. I hope very much that some of the majority Members in the Senate will do their best to persuade some of their counterparts in the House to cooperate in this respect. I am sure they are sincere here and I am sure they can persuade the House Members that this is an appropriate procedure.

Let me ask you another question: If these funds are not concentrated in the South, what detrimental effect would you anticipate?

Secretary FINCH. I am sorry, I am not sure I got the first part of the question.

Senator PROUTY. Under this double counting procedure, aren't the funds going to be concentrated in the South?

Secretary FINCH. That is correct.

Senator PROUTY. If they are not so concentrated, what do you think the detrimental effect would be?

Secretary FINCH. Well, as we pointed out, in the opening statement, this is where we have over 1,200 districts that have to be in compliance by September of 1970. And if we can't provide that concentration of effort, we are going to have some very bad situations in the communities, in the faculty-student mix and all of the other criteria that we are trying to achieve. That is why we put that concentration of funds in the bill, Senator.

Mr. Veneman. I think, Senator, it might be well to put this in perspective. What the bill proposes is out of that two-thirds of the funds that would be allocated under the formula—remember you have one-third with the discretion of the Secretary—at the present time out of that two-thirds about 60 percent would go into the South. But if you don't have double counting, it would be about 50 percent. Therefore, the impact of not doing this would be about 10 percent of that two-thirds.

It really goes into the districts that need the money most. So that is really the impact we have. It is probably not overly significant in total dollars, but it could have an impact in not being able to zero your money in so it will be most effective.

Mr. Allen. I think the concept that has been expressed here earlier, especially by Senator Mondale, that this legislation is intended to really help us achieve the goal of educational opportunity in the country. Improvement of educational opportunities for all boys and girls is inherent in this legislation. This is the first time the Federal Government has ever provided financial assistance to assist the school systems to do more than merely desegregate. It goes beyond this to provide the opportunity for integrated education, and I think that is important to keep in mind. It is very definitely in the lines of strengthening the educational system in this country, both North and South. The immediate problem is to help those districts that are under orders to desegregate now and to give them the kind of help they will need so they can have good integrated education. It also provides that there will be funds available for de facto districts and others that are moving forward to eliminating the evils of segregation in education.

Senator Prouty. What about provision for bilingual education?

Secretary Finch. We have increased funding for the bilingual education program. Funds can also be used under this bill for bilingual programs. It can be used if that district wants to put some of its dollars into bilingual programs. We do feel that the increase in our bilingual program in the other legislation is going to do more in that general area and problems as they come in with their own laundry list of needs would not rate that very high. That would depend, of course, from area to area. Texas, perhaps, more than California; and in some cases in your State.

Senator Prouty. That is very true. We have relatively few so-called minority groups in my State, but we do have a great many French-Canadian students who need help in this respect.

Thank you, Mr. Chairman.

Senator Pell. Senator Javits?

EXTENT OF MINORITY GROUP ISOLATION

Senator Javits. Mr. Chairman, I would like to deal with several questions briefly. I shall not take very much time.

But first to lay down one proposition which comes out of your statement, Mr. Secretary. Isn't it a fact according to the figures which are specified in your statement which I find at page 3 of your statement, that only about one-quarter of the minority children are fully experiencing equal educational opportunity? In other words, if there are some 8.5 minority students, and 6.1 are in schools with over 50 percent minority enrollments, 4.2 in schools with over 95 percent minority enrollment, that leaves only one-quarter of all minority students in the country that are really experiencing integrated educational opportunity?

Secretary Finch. That would be a fair analysis. And we would have to raise the question about what the quality of that final quarter is, too.

Senator Javits. Isn't that the single most glaring educational deficiency in the country?

Secretary Finch. I would say so, and I think Mr. Allen would agree.

CONSTITUTIONALITY OF PROPOSAL

Senator Javits. So on that basis, Mr. Chairman, on the constitutional question, I believe that that part of the bill which deals with desegregated education for school districts subject to court decree, or subject to order by HEW, is fully covered as to the constitutionality by section 5 of the 14th amendment to the Constitution which says the Congress shall have the power to enforce by appropriate legislation the provisions of this article, in view of the fact that the Supreme Court decision proceeded on the question of equal protection tests of the laws under section 1 of amendment 14.

Now, as to the second aspect of it as to helping those districts burdended with what is euphemistically called de facto segregation. There are two aspects: One is the fact that the Supreme Court may very well hold, it hasn't held yet but it may very well hold, that there is a denial of equal educational opportunity by the sheer fact of racial isolation. Do you find as a fact, Mr. Secretary, and do you ask the Congress to find as a fact, what you say in your prepared statement. "Furthermore, it is esential to recognize that racial isolation has an adverse effect on the quality of education for all children."

Secretary Finch. No question about it; and I know Mr. Allen agrees with me.

Senator Javits. Black and white alike?

Secretary Finch. Yes.

Senator Javits. Do you agree, Mr. Commissioner?

Mr. Allen. I certainly do, Senator.

Senator Javits. Does the words "racial isolation" permit itself to be defined as you have defined it; to wit, children who go to school which are 50 percent or more of one minority classification?

Secretary Finch. That is our understanding, and that is the legal term of art.

Senator Javits. Will the Commissioner of Education make the same statement?

Mr. Allen. I do, Senator.

Senator Javits. I think, Mr. Chairman, that that certainly would establish the legal basis. In addition, I rather have a feeling that the Supreme Court may very well go the rest of the way when the question is finally decided by it.

Secretary FINCH. If that eventuality occurs in the near future, what we would hope we could get out of some of the innovative programs that the districts would come out with would be very helpful in implementing that so we don't have to start from scratch.

Senator JAVITS. Another thing I would like to ask you about is the question that was raised by Senator Mondale with respect to another criterion. It seems to me we can and should draft a criterion and it doesn't have to be in all the details your counsel would like to see them in.

And I think Senator Mondale has a very important point there that we should not allow any district to cut and trim on this bill where we are giving money for a purpose because it is in technical compliance with the decree when it is flagrantly violating everything we are trying to accomplish.

Secretary FINCH. We would welcome any suggestions on that. I would only make another general observation that we don't get so loaded down with paperwork on this. I think we could accommodate that and would welcome your suggestion.

Senator JAVITS. As that would be an item of discretion which you intend to exercise anyhow, it would be our business to see that it doesn't add paperwork or redtape and reappeals or public hearings.

SCHOOL BUSING

Finally, Mr. Chairman, I would like to make a point about busing. I ask unanimous consent that a factual analysis of school busing published in the New York Times be inserted in the record.

Senator PELL. Without objection, it will be inserted at this point.

(The information follows:)

[From the New York Times, May 24, 1970]

SCHOOL BUSING A U.S. TRADITION

PROGRAM WELCOMED FOR YEARS EXCEPT FOR INTEGRATION

(By Davis Johnson)

Lansing, Mich., May 11—Nearly all the turmoil in the country over busing pupils to school has come with its use for racial integration. Even though busing for that purpose accounts for less than 3 per cent of the century-old, billion-dollar program of student transportation.

"We have had no complaints over busing unless integration was involved," Dr. John W. Porrter, acting superintendent of public instruction for the Michigan Department of Education, said in an interview.

The comment was typical of those from dozens of state education officials from all sections of the country who were questioned about the impact of school busing in their areas.

Free rides to school for pupils have been welcomed by most parents ever since Massachusetts passed the first state law providing them in the horse and buggy days of 1869.

By 1919 all states had followed suit, and by 1930 busing had begun a period of dramatic growth. From 7 per cent of the country's enrollment in that year, it has increased to 40 per cent today, making school busing the largest transportation service in the United States.

SIXTY-SIX PERCENT OF ALL PUPILS BUSED

The 40 per cent excludes millions of pupils who use public transportation, often at their own expense, to get to school in cities. Altogether state and Federal officials estimate, about two-thirds of the country's 45 million pupils are bused.

This massive growth of busing provoked little resistance till court and administrative orders in recent years began to require busing for racial integration.

The resistance has ranged from violence to buses in such cities as Lamar, S.C., and Denver to antibusing petition campaigns in cities from coast to coast.

Senator John C. Stennis of Mississippi reiterated the view of many opponents when he told the Senate recently that "parents are not going to permit their children to be boxed up and crated and hauled around the city and country like animals."

Dr. E. Glenn Featherston deputy associate commissioner for Federal-state relations in the United States Office of Education and for more than a quarter of a century the Federal Government's foremost specialist in pupil transportation, estimates that about 90 per cent of the nation's busing has resulted from school consolidations.

Although busing was at first a rural phenomenon, it has increased in recent years in the suburbs of major cities to provide transportation for high school students.

OTHER REASONS FOR BUSING

Dr. Featherston said that minor reasons for the increase in busing included recent shortening of distances for busing in some states, special pick-ups because traffic conditions would make walking hazardous, taxi service for the handicapped, liberalized regulations about giving rides to private school pupils, and busing for racial integration.

He agreed with state officials that only the last reason had produced any turmoil. Opinions differ as to how much of it is due to racism and how much to genuine fear that busing a child away from his neighborhood would harm his education.

In the South, busing children away from the home neighborhood to maintain segregation was customary before integration orders began to follow in the wake of the Supreme Court ruling against school segregation was customary before integration orders began to follow in the wake of the Supreme Court ruling against school segregation in 1954. Resistance stressed "freedom of choice" in schools.

Outside the South, however, resistance to integration orders has stressed allegiance to the neighborhood school system, often a system that was segregated because of segregated residential patterns.

While scattered cities in the North have experimented voluntarily with intracity or city-suburban busing for integration, court and administrative orders for classroom integration that involved busing have been bitterly resisted by at least a vocal minority ever since James E. Allen Jr., then New York State Education Commissioner first ordered Malverne, L.I. schools integrated.

STRIFE IS PERSISTING

The strife is continuing as more of the battle for integration moves from the South to the North. The situation in Pontiac, Mich., illustrates in microcosm the arguments pro and con and the tension generated by the issue.

With Michigan's first court-ordered busing for school integration due in Pontiac in September, the Washington Irving Elementary School's parent-teacher organization there has voted to seek secession from the Pontiac school district.

Last February, Federal District Judge Damon J. Keith, former cochairman of the Michigan Civil Rights Commission, ordered integration of the 25,000-pupil district. In March he approved a plan that would mean busing half the enrollment.

The Concerned Parents of the Pontiac School District was formed. About 90 members, in automobile caravan, brought petitions with 15,000 signatures opposing the plan to the Governor and legislators here.

Representative Jack McDonald of the Pontiac area introduced a bill in Congress to prohibit busing of students for racial balance. Last week the Pontiac school board took the Keith order to the Federal Court of Appeals for the Sixth Circuit in Cincinnati.

A DIVISIVE CONTROVERSY

Pontiac, an automobile-manufacturing city of 68,000 whites and 17,000 blacks, is sharply divided over the issue. Dr. Dana P. Whitmer said in an interview that it was the most divisive school controversy in the community in his 15 years as superintendent.

Pontiac already buses 3,600 children up to three and a half miles within the 40-square-mile district, in most instances because they would have to cross streets at intersections with heavy traffic.

None of these pupils is bused to achieve integration and busing them has aroused no opposition, said Vernon L. Schiller, business manager of the district.

About 12,000 pupils would be bused under the court-approved plan, for distances about the same as children are now bused.

Superintendent Whitmer said that opponents invariably prefaced their objections to the new busing plan with "I'm not opposed to integration, but. . . ."

Following the "but," he said, come expressions of concern that parent-teacher association for the benefit of a child's education would be more difficult wherever distance between a home and a school was lengthened; that educational programs might have to be sacrificed to pay for additional busing; that extracurricular school activities would be curtailed if a student had to catch a bus home after school, and that animosities in a changed environment might cause disruptions not conducive to learning.

SAFETY A MAJOR FEAR

He said a major fear seemed to be for the safety of pupils "in a strange neighborhood farther from home, particularly if the neighborhood has a different racial complexion."

Dr. Porter said the cost of busing was a consideration holding back voluntary efforts by cities to integrate.

Like most states, Michigan now excludes city districts from aid for busing that is wholly within city limits. Most pupils Pontiac now buses live far enough outside the city limits for the state to pay much of the cost.

Unless pending legislation is passed to provide state aid for busing in cities, all of the cost of the court-ordered busing for integration in Pontiac, estimated at $1.4-million the first year, will have to be borne by the Pontiac school district.

Nationally, the cost of state-aided programs for busing 40 per cent of all pupils is more than $900-million and growing annually, figures compiled by the National Education Association show.

The outlay is second only to the cost of teachers' salaries as an educational expense. Forty years ago, $55-million and 58,000 buses did the job. It takes 236,000 vehicles today.

CONSOLIDATION A KEY REASON

A major reason for the increase, every state official questioned agreed, has been the virtual disappearance of the little red schoolhouse from the rural scene, resulting in the consolidation of 100,000 school districts into 17,000.

Much of this occurred in the period following World War II. Dr. Featherston said opposition to busing for consolidation had always been "very minor."

"Some parents didn't want to lose their local schools and have their children go into town," he said, "but they eventually realized that the kids got a better education in a larger school."

Even in busing for integration, there is little evidence that the opposition is to time spent on a bus or hardships endured in waiting for or taking the ride.

In the South, busing has long been a favored tool for providing an education. Integration orders have not increased its use.

In a statement last month in response to a statement by President Nixon opposing busing for integration, the United States Commission on Civil Rights said:

"For decades black and white children alike in the South were bused as much as 50 miles or more each day to assure perfect racial segregation."

"No complaints then were heard from whites of any harmful effects," the commission said.

BUSING IN THE SOUTH

Southern educators felt busing was so essential that numerous counties in Mississippi, Louisiana, Alabama, Georgia, North Carolina, Texas and Virginia transported almost all their pupils, white buses taking white children to white schools and Negro buses meeting them on the streets while taking black pupils to Negro schools.

About 90 percent of 300 desegregation plans approved by the Department of Health, Education and Welfare for Southern school districts last year decreased total busing.

"We have saved money by maintaining one bus system instead of two," Roy Walter, director of school transportation and driver education for West Virginia, told an interviewer.

Despite their speeches denouncing busing to achieve integration in public schools, many Southern legislators now support busing to private schools recently established to provide a segregated education.

The Southern Regional Council reported last month after a survey: "Parents do not move their children from public to private schools because of threats of increased busing. Not only is busing the way of life in private segregated academies; it is in the segregated schools where proportionately more busing is done and for longer distances."

The rigors of busing, with rides extending up to 83 miles in some parts of the West, produced no official solicitude until integration became a purpose. Louisiana even transported children by boat.

"We have had a lot of demands for additional transportation," said John Maddox, superintendent of transportation for the Georgia Department of Education. "The state doesn't bus children living within a mile and a half of their schools, and parents want the free transportation."

The demand is common to South, East, North and West.

Senator JAVITS. I would like to point out that this claims, Mr. Secretary and Commissioner Allen, that altogether State and Federal officials estimate that about two-thirds of the country's pupils are bused. They point out that 40 percent are bused by school transportation, which excludes public transportation. My own children have gone to school on public buses.

Secretary FINCH. Right.

Mr. ALLEN. I know about the 40 percent; I am not quite certain about the other. I think that is right.

Senator JAVITS. But in any event that seems to be a reasonable estimate.

Mr. ALLEN. Ninety percent of the districts bus.

Senator JAVITS. And busing has been used, has it not, as a tool of segregation in the South?

Secretary FINCH. Absolutely.

Senator JAVITS. Much more than as a tool of desegregation?

Secretary FINCH. Yes. As a matter of fact, when we broke up the classic dual school system, busing was reduced because you wouldn't have to go through all of this of getting all of the blacks to one school and all the whites to the other school.

Senator JAVITS. And busing was used to materially raise the level of education, was it not, when we cut down from 100,000 school districts, including little red schoolhouses, to 17,000?

Secretary FINCH. Absolutely; that was one of the reasons why they had unitary districts.

Senator **Javits**. And busing is a safety measure, too, is it not, in that it makes it less likely for an accident to occur.

Secretary **Finch**. I don't know if I could give you any factual data on that.

NEW AUTHORITY VERSUS EXISTING LAW

Senator **Javits**. This is all contained in this particular analysis, which seems to me to be very intelligent.

Finally, Mr. Secretary, tell me why, in your judgment, this law is needed and why existing law cannot be utilized for the purposes which this legislation seeks?

Secretary **Finch**. As I stated earlier, Senator Javits, of every dollar spent on education in this country, only 9 percent is contributed by the Federal Government. I would like Mr. Allen to speak to this too. What dollars we have, we have spread too thinly and it comes down to perhaps $68 a student. I am talking about title I. And they have generally been cast, as I said, along the line of poverty as a criterion. What we are trying to do here is to improve educational experience in areas which are desperately in need of it.

We have, as I said, a time frame with regard to this great number of schools that will come into compliance this fall. That is as simply as I can put it for purposes of this legislation: that the formula grants have to be spread so thin that we had to go to a project grant approach.

Mr. **Allen**. I think also I might say that this legislation gives us greater flexibility to do what the Senator has said than is possible under existing legislation. It really can zero money on the school systems that need it most for this purpose.

Senator **Javits**. And the double counting which you make is designed for that purpose?

Secretary **Finch**. With a phaseout insofar as the South is concerned as districts in the South complete desegregation.

Senator **Javits**. So within that time the phaseout, however, would be automatic depending upon districts which exceed the 2 years since the time of their beginning of desegregation?

Mr. **Veneman**. I think it would be reasonable to assume that as that occurs in the Southern States that it is very possible that the courts may rule on this in the Northern States. So that the double-counting provision may remain. Pasadena, Calif., would be entitled to double counting because it was found to be a de jure district.

Senator **Javits**. Thank you, Mr. Chairman.

Senator **Prouty**. Mr. Chairman, may I ask one question at this point? If we look at expenditures under title I, is it not true that because the formula is in part based on average State per pupil costs that the South does not receive its fair percentage of funds as indicated by the higher percentages of poverty children which reside there?

Secretary **Finch**. That is true, Senator.

Senator **Prouty**. Could we have some charts that would demonstrate how the South gets relatively less?

Secretary **Finch**. We can provide those for you; we don't have them here.

Senator **Prouty**. I think that would be helpful.

Thank you, Mr. Chairman.

(The information subsequently supplied follows:)

North - South Distribution of Title I Funds

The table below presents the North-South distribution of the Title I allotments and the number of low income children for 1969. The 17 southern and border states have approximately 50 percent of the low income students and receive slightly over 45 percent of the Title I funds. The south thus has a slightly higher proportion of the total poor children than its share of the Title I appropriation.

It should be pointed out, however, that educational costs tend to be lower in the southern states. Therefore, although it could be argued that either region is receiving less than its fair share of the appropriation, neither is being grossly shortchanged.

Number of Low Income Pupils and the Title I Allocation, by Region

Region	Low Income Pupils[a]	Title I Allocation
North	3,344M (50.2%)	$612.3M (54.5%)
South[b]	3,321M	$511.0M (45.5%)
TOTAL	6,665M (100%)	$1,123.1M (100%)

---

[a] Low income is defined using the Title I definition of pupils from families under $2000 or who are on AFDC.

[b] The 17 southern and border states are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisians, Maryland, Mississippi, Missouri, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

SUBMISSION OF QUESTIONS

Senator JAVITS. May I ask unanimous consent that I and all members may have leave, if the Secretary is willing, to submit questions to him which may be answered as part of the record?

Secretary FINCH. Absolutely.

Senator PELL. Within presumably a 3-day limit.

Senator JAVITS. From this point, yes.

Secretary FINCH. With respect to some of the information, like some of the information on the House side, I would want in some cases to waive the 3-day limit, Mr. Chairman.

Senator PELL. I would hope we would get the answers in a couple of weeks.

Secretary FINCH. Yes, I don't want to promise something we can't give.

(The following information subsequently supplied follows:)

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 3, 1970.

Hon. JACOB JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I am writing in reply to your questions concerning the proposed Emergency School Aid Act of 1970.

Your first question was:

1. The view has been expressed that the double counting provision in the formula contained in this bill gives encouragement to school districts which have up until this time refrained from their obligation to comply with the law and the constitution and offers less money to school districts which have sought to comply with the law heretofore but nevertheless still require assistance. Your comments?

The double counting mechanism is a factor in the allotment of funds among States. It does not determine the amount of money which a district within that State might receive under this program. Therefore, double counting does not, in any direct way, penalize the districts which have complied with the Constitution. Their eligibility is determined by three categories of assistance, not double counting, and districts which have heretofore been in compliance with the Constitution would be eligible under categories 2 and 3. School districts which have completed desegregation under a court order or voluntary plan within the two years prior to their application are eligible under category 1.

However, double counting does affect the distribution of two thirds of the program funds to the States. It has the effect of increasing by only about 10 percent the funds which the southern and border States would receive under a formula based only on the number of minority students.

We feel that this distribution scheme is justified because those States have the preponderance of minority students in schools which are isolated racially (over 50 percent minority). Also, we feel that it is of highest priority to completely eliminate the unconstitutional dual school systems. This is another reason for double counting for minority students in schools under court order to desegregate.

Your second question was:

2. Referring again to the double counting provision in the formula, school districts implementing a desegregating plan under a Federal court order are included. Why cannot this be done with school districts operating under a State court order or order of a State education department?

Districts under State court or administrative order will be eligible for double counting if their desegregation plans have been approved by the Department of Health, Education, and Welfare under Title VI of the Civil Rights Act of 1964. In addition, State-court-approved plans will be eligible for double counting if they have been upheld by a Federal court on appeal.

The need for uniformity of desegregation requirements necessitates that State court or administrative orders be reviewed on a Federal level. Such a review also obviates any advantages which might be gained through collusive State litigation. Since this review is open to all concerned school districts, there is no reason why any district which is desegregating according to Federal standards need be excluded from double counting. Districts under State order may want to have their status reviewed in any case, to be sure of their eligibility for other Federal programs.

Your third question was:

3. Will you please furnish the Committee with a chart camparing the funds allocated to each State under the bill, as introduced, with State allocations under a formula with the double counting provision eliminated?

Tables are attached indicating the State-by-State allotments both with and without the double counting provision.

Your fourth question was:

4. Existing legislation, principally the Elementary and Secondary Education Act, provides that persons at interest might participate in an organized way in the development, review and evaluation of projects. Do you feel a similar provision might be of use in the legislation now before us?

We feel that interested persons and groups in the communities eligible for assistance under the bill should be involved in the planning, review and evaluation of projects. The guidelines for the expenditure of the $75 million which we have requested under existing authorities presently provide for community participation of this sort. We feel that legislative authority is not necessary for such activities however.

Your fifth question was:

5. What proportion of the funds under the formula are going to the 17 southern and border States?

In FY 1971, 63 percent of the funds which are allotted by formula would go to the 17 southern and border States. Since only two-thirds of the total funds are to be allotted by formula, this represents 42 percent of the total funds.

Your sixth question was:

6. Does the bill adequately assure classroom integration along with school integration?

The bill does not explicitly mention this problem. However, a school district maintaining classroom segregation would be in violation of Title VI and therefore ineligible for funds. Guidelines for administration of the program will provide that no district can qualify for assistance if classroom segregation or any other racially discriminatory practice takes place. Districts will be required to give assurances to this effect.

Your seventh question was:

7. As you have indicated your belief that the bill is principally intended to promote desegregation, do you believe this purpose could be enhanced by changing the bill in such a way as to require a school district which applies for funding for intergroup programs under Sec. 5(a)(3) to show first that it cannot feasibly qualify for desegregation funds under Sec. 5(a)(2)?

We agree with your ultimate objective of trying to encourage the greatest degree of reduction of racial isolation possible in a given district. Nevertheless, this portion of the bill is directed primarily to situations involving schools having no present Constitutional obligation to overcome racial isolation by fully desegregating. Accordingly, methods of dealing with this kind of racial isolation are largely a matter of local discretion, and alternative approaches should be encouraged.

We have made the reduction of racial isolation a priority matter. Where a district can desegregate but chooses instead to apply for funds for other kinds of programs under category 3, that application would be given low priority. However, if you wish to offer an amendment to the bill, we will be happy to offer drafting assistance.

Your eighth question was:

8. Which specific school districts in New York State will be eligible to receive funds, as noted in the tables submitted as part of the Department's testimony, and what amounts will they be eligible to receive?

The names of the eligible New York districts are attached.

No New York districts are currently eligible to receive funds under category 1. There are 29 districts in New York which have one or more schools with a minority enrollment of 50 percent or more and are therefore eligible for funds under category 2. (In addition, a district would also be eligible if it had one or more schools which were nearing 50 percent minority enrollment, and were judged to be on the verge of racial isolation. Unfortunately, we don't have information on which additional districts this might include.) Under category 3, there are nine districts in New York with 10,000 or more minority students or 50 percent or greater minority enrollment and therefore, eligible to receive funds.

Unfortunately, we will not be able to tell you how much each district will receive. This depends on three things: the suitability of its proposed programs, the amount of money allotted to New York State under the formula, and the amount of money we decide to spend in these districts under the discretionary provisions of the Act. We *can* tell you that in FY '71, districts in New York State would be eligible under the Act to apply for $14.53 million from the funds which are allotted under the formula. In FY '72, we expect these districts to be eligible for $41.93 million of the formula funds.

I hope this answers your questions satisfactorily.

Sincerely,

Elliot L. Richardson,
Secretary.

FORMULA ALLOTMENT DISTRIBUTION TO STATES—PROPORTION AND AMOUNT

[Dollar amounts in millions]

	Percent of total		Year 1, $500,000,000 program		Year 2, $1,000,000,000 program	
	Double counting	Not double counting	Double counting	Not double counting	Double counting	Not double counting
Alabama	4.58	3.11	$22.9	$15.5	$45.8	$31.1
Alaska	.07	.12	.3	.6	.7	1.2
Arizona	.86	1.20	4.3	1.0	8.6	2.0
Arkansas	1.83	1.25	9.1	6.2	18.3	12.5
California	9.03	13.33	45.1	66.6	90.3	133.3
Colorado	1.26	1.07	6.3	5.3	12.6	10.7
Connecticut	.58	.81	2.9	4.0	5.8	8.1
Delaware	.22	.28	1.1	1.4	2.2	2.8
District of Columbia	1.18	1.62	5.9	8.1	11.8	16.2
Florida	6.23	4.24	31.1	21.2	62.3	42.4
Georgia	5.35	3.66	26.7	18.3	53.5	36.6
Hawaii	.03	------------	.1	------------	.3	------------
Idaho	.04	.07	.2	.3	.4	.7
Illinois	4.06	5.59	20.3	27.9	40.6	55.9
Indiana	1.02	1.40	5.2	7.0	10.2	14.0
Iowa	.11	.15	.5	.7	1.1	1.5
Kansas	.34	.49	1.7	2.4	3.4	4.9
Kentucky	.74	.74	3.7	3.7	7.4	7.4
Louisiana	5.45	3.70	27.2	18.5	54.5	37.0
Maine	.02	.05	.1	.2	.2	.5
Maryland	2.25	2.37	11.2	11.8	22.5	23.7
Massachusetts	.47	.69	2.3	3.4	4.7	6.9
Michigan	2.67	3.57	13.3	17.8	26.7	35.7
Minnesota	.16	.23	.8	1.1	1.6	2.3
Mississippi	3.83	2.60	19.1	13.0	38.3	26.0
Missouri	1.21	1.63	6.0	8.1	12.1	16.3
Montana	.05	.07	.3	.3	.5	.7
Nebraska	.14	.20	.7	1.0	1.4	2.0
Nevada	.12	.18	.6	.9	1.2	1.8
New Hampshire	.01	.01	.05	.05	.1	.1
New Jersey	2.17	2.98	10.8	14.9	21.7	29.8
New Mexico	1.09	1.50	5.4	7.5	10.9	15.0
New York	6.32	8.80	31.6	44.0	63.2	88.0
North Carolina	6.25	4.24	31.2	21.2	62.5	42.4
North Dakota	.01	.02	.05	.1	.1	.2
Ohio	2.59	3.55	12.8	17.7	25.9	35.5
Oklahoma	.97	.90	4.8	4.5	9.7	9.0
Oregon	.13	.22	.6	1.1	1.3	2.2
Pennsylvania	2.39	3.27	11.9	16.3	23.9	32.7
Rhode Island	.07	.10	.3	.5	.7	1.0
South Carolina	4.07	2.76	20.3	13.8	40.7	27.6
South Dakota	.14	.20	.7	1.0	1.4	2.0
Tennessee	3.16	2.15	15.8	10.7	31.6	21.5
Texas	11.13	10.32	55.6	51.6	111.3	103.2
Utah	.12	.20	.6	1.0	1.2	2.0
Vermont	------------	.07	------------	.3	------------	.7
Virginia	4.24	2.89	21.2	14.4	42.4	28.9
Washington	.34	.59	1.7	2.9	3.4	5.9
West Virginia	.21	.24	1.0	1.2	2.1	2.4
Wisconsin	.42	.59	2.1	2.9	4.2	5.9
Wyoming	.06	.08	.3	.4	.6	.8

DISTRICTS IN NEW YORK STATE ELIGIBLE FOR ASSISTANCE UNDER THE EMERGENCY SCHOOL AID BILL

District	City	County
New York—29:		
Albany	Albany	Albany.
Poughkeepsie	Poughkeepsie	Dutchess.
Buffalo	Buffalo	Erie.
Lackawanna	Lackawanna	Do.
Solmon River	Fort Covington	Franklin.
New York City public schools	Brooklyn	Kings.
Rochester	Rochester	Monroe.
Glen Cove	Glen Cove	Nassau.
Hempstead	Hempstead	Do.
Malverne	Malverne	Do.
Roosevelt	Roosevelt	Do.
Westbury	Westbury	Do.
Niagara-Wheatfield	Sanborn	Niagara.
Niagara Falls	Niagara Falls	Do.
Utica	Utica	Oneida
La Fayette	La Fayette	Onondaga.
Syracuse	Syracuse	Do.
Newburgh	Newburgh	Orange.
Amityville	Amityville	Suffolk.
Wyandach	Wyandach	Do.
Bridgehampton	Bridgehampton	Do.
Patchogue	Patchogue	Do.
Monticello	Monticello	Sullivan.
Mount Vernon	Mount Vernon	Westchester.
Port Chester	Port Chester	Do.
Yonkers	Yonkers	Do.
Greenburgh	Hartsdale	Do.
New Rochelle	New Rochelle	Do.
Peekskill	Peekskill	Do.

RACIAL ISOLATION IN SOUTH

Senator JAVITS. I had one other thing. It seems to me that your figures with respect to the input of children in segregated situations, which appears at the bottom of pages 9 and 10, are very important. You still show that 55 percent of the minority children in these racial isolation situations are in 17 Southern and Border States.

Secretary FINCH. That is correct.

Senator JAVITS. And that about 67 percent of those in the 95-percent racial isolation situations are in the Southern and Border States. To me that is very important because Senator Pell and I were charged so heatedly with zeroing in on the Southern States in connection with the elementary and secondary education bill and it seems to me the fact is there is still a massive problem of racially isolated education in these States. And I think we have a right to do everything we can, including this bill, to bring about an end to it, after 16 years since the Supreme Court's decision.

I thank the chairman for the additional time.

Senator PELL. Under this mixed protocol list, the next Senator will be Senator Dominick.

Senator DOMINICK. Thank you, Mr. Chairman.

Mr. Secretary, throughout the statement and in the bill, there is a fundamental assumption that is made, which is specified, I think, at the top of page 2 of your statement. And you say in here that it is essential to recognize that racial isolation has an adverse effect on the quality of education for all children.

Now let me ask you just a few questions on that. Frankly, this bothers me. Are you talking about required racial isolation or are you talking about preferential racial isolation?

Secretary **Finch**. I think my answer would be either. Commissioner Allen might have a different response, but that would be my answer.

Senator **Dominick**. There are a great number of blacks that I know who are asking at this time that they be given separate studies, that they be given separate wings, that they be educated in separate institutions from the whites. I think this is a subject which is not unknown to you. How does S. 3883 fit in with their desires?

Secretary **Finch**. The question of the community, whether it is a social community or an educational experience that is based on separatism, we think is destructive, ultimately destructive, to what we are trying to accomplish in this system of government.

Senator **Dominick**. Now, having recognized the possibility that some people in the minority groups themselves would prefer to be educated separately, and knowing that some majority group members prefer separate educational facilities for their children, can we state categorically that their views are inconsistent with "quality education" as defined? What is your definition of quality education?

Secretary **Finch**. That is probably the most difficult question I can think of to respond to. I imagine quality education is providing the optimum experience permissible in physical facilities available and the quality of teaching available. And maybe the Commissioner has a definition as the educators use that I don't understand. But that is the way I look at it.

Mr. **Allen**. I hope you understand it, Mr. Secretary; I am sure you do.

What we are really talking about here is providing the conditions that enable each boy and girl to achieve his full potential in terms of development. And any conditions that stand in the way of doing this, it seems to me, ought to be eliminated. We take the position that segregated education does stand in the way of achieving that.

Senator **Dominick**. Are you talking about sociological conditions or are you talking about educational conditions and the ability to absorb knowledge from textbooks?

Mr. **Allen**. I am talking primarily about educational objectives. Many of the educational objectives are sociological also. But I am talking primarily about educational achievement of boys and girls.

Senator **Dominick**. Also implicit in this is the fact that if you are going to be a member of the minority race, the only way you can get a decent education is to be with whites. What gives us, as whites, that egotism?

Mr. **Allen**. I think it is wrong to take that kind of position.

Senator **Dominick**. It may be wrong, but that is what is implicit. Senator Mondale's questions and all the rest of them imply the fact that if you aren't educated with whites you can't get a good education.

Mr. **Allen**. A child ought to have a good opportunity for an education whatever his race is. What we are saying is, and what we know is that as a part of quality education for all, both blacks and whites, is to help them learn how to live in a multi-racial world and to get rid of the kind of prejudices and discriminatory practices, and so on, that have put us in the position we are today.

Senator **Dominick**. Then we are talking about sociological experience as opposed to educational trends?

Mr. **Allen**. We are talking about both.

Senator **Dominick**. You are talking about education in the broad sense as opposed to the classic sense.

Senator **Mondale**. I endorse the Commissioner's definition. My view is integration is important for everybody, not just minorities. Secondly, it is my view that most of the testimony we have received states that poor children need to be educated with more advantaged children in order to get an opportunity for the best single source of education; namely, one's peers.

Senator **Dominick**. That I would agree with. But poor children is not the definition that is used in this particular bill.

I again go back to the point that Dr. Coleman made when he testified before our committee. He stated that minority students with sound cultural backgrounds could attend minority schools and receive just as good an education as if they were placed in a majority school.

Secretary **Finch**. We have some material we would like to put in the record with regard to that.

(The information subsequently supplied follows:)

The Office of the Assistant Secretary for Planning and Evaluation is currently doing an analysis which synthesizes and compares the results of practice and current research relating to cultural and economic determinants of educational achievement. We expect this to be fully prepared in the very near future and we will transmit it to the committee at that time.

Senator **Dominick**. And the bill is based solely on minority children. It doesn't say anything about economics and it doesn't say anything about cultural backgrounds.

Secretary **Finch**. We are not trying to solve the whole problems of educational matters with this bill.

Senator **Dominick**. I understand that. And I think your effort in trying to do something about de jure educational systems is admirable and I am all for it. My problem is when you start making automatic and arbitrary classifications which serve as a basis for providing additional money for compensatory programs that most of our reports indicate are not very effective.

Secretary **Finch**. There is a very, very small component of compensatory program in these project grants that would be submitted by the various districts. This does not mean if a given district wanted to come up with a compensatory type program that we couldn't approve it. But we believe that you have the compensatory laws on the book. You can argue about whether or not they had a good result or uneven result, and in some cases they have been helping depending on the base that they started from.

But this is not a compensatory program by and large. It is a project grant program with the kind of activities that I listed earlier in my testimony.

Senator **Dominick**. It is my understanding that the bill asked for $1.5 billion in authorization; is that correct?

Secretary **Finch**. That is correct.

Senator **Dominick**. It is my understanding that this was the total program the President was going to ask for.

Secretary **Finch**. That is correct.

Senator **Dominick**. You are asking for $150 million in supplemental funds for presently authorized programs?

Secretary Finch. Well, the supplemental is included in the $1.5 billion.

Senator Dominick. But you don't need authorization for the $150 million; do I understand that correctly?

Mr. Veneman. We don't need authorization; we are asking for appropriation.

Senator Dominick. I understand that, sir.

Why wouldn't the correct amount be $1,350 million in this bill?

Secretary Finch. Technically that is correct, but what we are fighting again is this time frame. What we had to try to do was to get this money under existing authority through the supplemental in order to try and get it out this fall. This amount was about as much as we felt we could really use effectively, given the people and given the resources we have on hand.

Senator Dominick. Without trying to be unpleasant in any way, I think you are going to have a lot easier time with $150 million than you may have with this bill, and I just wonder whether or not we are going to need the whole $1.5 billion.

Mr. Veneman. I pointed out yesterday to the House committee that these are separable and that the expenditures of the funds under the authority we propose to expend them on could be used effectively between now and September in these nearly 1,000 districts that we referred to for the expenditure of $150 million.

So I would hope that you would go ahead. Of course what would occur would be a $1.5 billion authorization and there would only be an appropriation of $350 million out of this bill.

Senator Dominick. Mr. Veneman, let me ask you this question, if I may. Assume a situation in which a school district, is located in an area of voluntary residential segregation; no deliberate pattern or anything else, but it has just grown up. But they don't have 10,000 minority children in the district and they don't have 50-percent minority children. Is my understanding correct that the school district gets no money?

Mr. Veneman. Not unless that particular school had 50 percent or more.

Senator Dominick. Is the legislative criteria applied to a particular school within a district?

Secretary Finch. Yes.

Mr. Veneman. Under the second category, if one school had more than 50 percent, that school would be entitled to submit a project proposal. If the district itself was more than 50 percent and/or had 10,000 or more minority children, then they would be eligible.

Senator Dominick. So you can pinpoint this down to a particular school within a district?

Mr. Veneman. Yes. On the basis of an application from a school, the application would be from the district for the purpose of carrying out the project in that school.

Senator Dominick. To what extent would this relieve the district of supplying the existing funds for that school?

Secretary Finch. Absolutely none, because if it is not written explicitly in the bill it will be in the criteria. It cannot supplant local money. It has to be in addition to other funds.

Senator **Dominick**. So the net effect of the bill is whatever school has more minority children than the other gets favored in terms of finances?

Secretary **Finch**. Not necessarily, under category 2, a district is eligible if one or more schools have 50 percent or more minority students. But there is no necessary preference for the districts with schools that have the highest percentage of minority students, nor for the schools within an eligible district which have the highest percentage of minority students.

Senator **Dominick**. But title I is not based on racial criteria such as minority children.

Secretary **Finch**. No.

Senator **Dominick**. It deals with all disadvantaged children equally.

Secretary **Finch**. The principles are the same.

Senator **Dominick**. I don't think they are; I think they are very different.

Secretary **Finch**. I am talking about the principle of the expenditure for the funds for the allocation. You probably have to say that about 90 percent of those children receiving funds under title I would be affected by this program. There is a great overlap.

Senator **Dominick**. There is an overlap without any doubt, but there are a great number of poor whites in the schools and many other areas which apparently are not going to get any aid.

Secretary **Finch**. Those under the existing program, Senator, are attacked on the economic line and the poor whites presumably are picked up there. There is, as I indicated, a multiplier effect even in the southern districts. It just seems to me that whites should benefit, even though we are talking about minorities. The whole system is going to be enriched. This program is not exclusively for whites or blacks, or Puerto Ricans or any other single group.

Mr. **Veneman**. For example, if a district is eligible under the provisions of this act and it is desegregated and has a project proposal, those dollars would go into that school district are going to benefit all the children in that district. They are not just going to put the money on the desk for the black child.

Senator **Dominick**. They are going to put it on the desk of the school?

Mr. **Veneman**. Yes.

Senator **Dominick**. Dr. Allen, do you think that the American school system, exclusive of the areas where intentional segregation has occurred, has failed to provide students with equal educational opportunities?

Mr. **Allen**. I think we have a long way yet to go to provide children with full equal educational opportunity. This has been the goal and I think we have made great progress, especially over recent years; but we have a long way yet to go.

Senator **Dominick**. Then I think that the select committee may be spinning its wheels if it has already been determined that American children are not receiving equal educational opportunities.

Mr. **Allen**. No; I don't think so. We have to constantly move toward this goal. It is a goal that is going to be receding all the time because

83

the changes in our society and advancements that take place in all fields of our society. The need for improved education is going to create problems that make it necessary always to revise the educational curriculum, to revise the program administration of the school, and so on, in order to further our effort to achieve that goal.

Secretary **Finch**. If I can add to that, we are learning a great deal about the inadequacies of the conventional secondary education. So we are not spinning wheels as we move in those directions, Senator. We have learned much about this.

Senator **Dominick**. That is all I have.

Senator **Pell**. Senator Kennedy?

Senator **Kennedy**. Mr. Chairman, Mr. Secretary, I was wondering whether you consulted with any of the civil rights people in the development of this program? Could you let us know whom you talked with and about what?

Secretary **Finch**. We had a number of consultations. In some cases they chose not to be identified; they didn't want to be compromised. But I would be perfectly candid in saying we don't come forward with any endorsements from those groups, Senator. We hope we will get support from some of the educational organizations. But that is the status.

Senator **Kennedy**. I am thinking in particular of some of the civil rights groups that have been working for years and years on the whole problem of desegregation in the North and South and who have profound experience and an enormous amount of knowledge. I would be interested in what input they had in the development of legislation which is, I imagine, attempting to complement what they and others have been doing.

Secretary **Finch**. We have Dr. Coleman and Dr. Cody meeting with different people from various disciplines, various minority groups. Dr. Anrig was part and parcel of that. He might want to go into it in more depth if you would like to pursue it.

I was not present in all those meetings, Senator.

Senator **Kennedy**. For example, there are the Washington research project and the NAACP legal defense fund, which did that excellent report on title I.

Secretary **Finch**. I agree with that.

Senator **Kennedy**. I am just wondering, for example, whether they were consulted. What kind of input was there from each of the groups who have this interest and experience in desegregation and the related efforts under title I. Did you seek their reactions and responses?

Secretary **Finch**. They were consulted. Dr. Anrig can give you what their reaction was.

Mr. **Anrig**. We have attempted to consult not only with groups as you suggest here, but with superintendents. We haven't done enough. The time has been very short. This is an emergency bill and we have been treating it as such and trying to move as fast as possible. And we expect this week or next week to have a group in to assist us in the development of the program criteria for administering the program to address ourselves to any point that Senator Mondale raised earlier to see that there are projections in the program criteria to assure against abuses of the fund. We have attempted to do this, but in the short time we have not done as much as we wished to do. It is important and we will be doing more in the upcoming weeks.

Senator KENNEDY. As I understand it, in many communities biracial committees have been appointed usually by court order, to oversee school desegregation plans. What provisions could be made for the participation of community residents, and in particular the biracial committees, in the planning of these project applications for funds. What input are we going to have at the local level and from local groups in the formulation of the applications?

Secretary FINCH. This will be provided for in the program criteria. It is primarily that they do not have a veto power in such bodies; the board has the ultimate responsibility. We would assume that they would have a very strong hand in providing input in helping put together the project grant. And in the process of sending our people out to work with these boards and community groups, we will be sitting with them as the applications are prepared, Senator, and assure that there is that kind of input. Because, as you know and members of the committee know, unless you have got community support for these programs they will not succeed.

Senator KENNEDY. Now, you have the $150 million summer emergency fund.

Secretary FINCH. You are speaking to this supplemental. It is addresed to the problems of moving toward the fall; hopefully it would not be limited just to the summer.

Mr. VENEMAN. This particular piece of legislation we have proposed, and we have appeared before committees asking for $150 million in supplemental appropriations which would be expended through five authorities in HEW and OEO. These combined authorities would give us in essence the same objectives and means of reaching the programs that we are attempting to do through this legislation. It would give the kind of flexibility that would be required and would be able to be used strictly for de jure districts which are primarily desegregating for the first time this fall or have desegregated within the past 2 years, only those category I districts.

Senator KENNEDY. How are you going to evaluate and monitor these programs, the projects that you are going to fund?

Mr. VENEMAN. One percent of the fund is proposed to be held back for evaluation.

Senator KENNEDY. Could you outline for us the procedures?

Secretary FINCH. I think Dr. Anrig can probably give you that.

Mr. ANRIG. Senator, it may help to go through the procedures that we see ourselves following for the first $150 million in the coming weeks ahead of us. First, to begin with, as far as helping school districts apply for those funds, we would bring the various school representatives from the various States together in a central point, State by State, and provide for them at that location advice as to what these funds can be used for. And, as Senator Mondale has cautioned, what they may not be used for. And we will sit down and provide them with assistance both from the Office of Education staff and from universities and so on in drafting the initial proposal which would later be submitted. The superintendent would then go back to his school district and review the proposal with the board of education and a recommended biracial advisory group and then subsequent to the board's formal action submit a proposal to the Office of Education for funds. Included in that proposal under our present thinking would be what we refer to as an outside educational system. Built into the proposal from the school district would be an evaluation component which would require someone from outside of the school district to evaluate what is going on in that school district.

In addition to that evaluation component, Secretary Veneman has mentioned the 1 percent set-aside that would be used for evaluation.

Senator Kennedy. Will there have to be a biracial advisory group; would you insist on that in all these communities?

Mr. Anrig. Most of the court orders are requiring biracial advisory committees.

Senator Kennedy. If they don't, would you insist on it?

Mr. Anrig. We would recommend that all school districts applying for funds on this would consult with a biracial committee composed of parents of the children.

Senator Kennedy. You don't mind then, do you, if we require that? Do you mind that?

Mr. Anrig. I don't mind; no, sir.

Secretary Finch. Maximum feasible participation will probably help sell Mr. Moynihan's book.

Senator Mondale. Maximum feasible misunderstanding?

Secretary Finch. Yes.

Senator Kennedy. Have you any comment about why you didn't include any construction funds in this legislation?

Secretary Finch. Again, the short-term nature of the 2-year time frame—and I know the chairman gets a little upset when I refer to emergency legislation—I think made it impossible to do anything other than to make the kind of temporary remodeling changes, like lowering the desks, if you are talking about older children, and making them lower for smaller children, improving lavatories, that kind of thing. Obviously, if we had tried to get into new construction with this, even with the full $1.5 billion, it would have gone very rapidly. So we are trying to provide the technical help and extra assistance of that kind to meet the terrible critical problem of new construction.

Senator Kennedy. Obviously it takes time. But this is the way you are going to get some permanent change, not with mobile units and portable schools. And school construction certainly can be done within the time frame of a couple of years. They are building schools up in our State in 8 or 9 months.

Secretary Finch. We can see the need, but we simply felt that major construction was not the subject of this bill.

Senator Kennedy. I suppose what you are balancing is whether this ought to be a longer term bill, whether perhaps we should extend the bill over a 3-year period with a construction section. I don't question the sincerity of your motivations on the bill, but perhaps we should at least consider pilot construction projects in terms of really doing this job of desegregation.

Secretary Finch. The only problem, Senator, is you would have those school districts lined up, I don't know how many deep, three times around the HEW building. And they would all have new construction grants in hand and we wouldn't be doing in-service training programs, trying to develop better community relations, and upgrading of curricula and other things they need.

Mr. Veneman. Education, as you know, Senator, is far more than bricks and mortar.

Senator **Kennedy**. But it is awfully difficult, Mr. Secretary, to try to educate these children in broken down school buildings with windows out and antiquated desks and so on. I have had a chance of visiting many of the schools in the city of Boston, which are not unlike other schools in other major cities, and it is awfully difficult to expect kids to meet all kinds of sophisticated criteria if the heating doesn't work and the windows don't work.

Secretary **Finch**. As a matter of fact, the first $150 million that we are talking about will attack the first segment of this, the first step. Because of the whole syndrome of separate but equal, their problems down there are not really physical, because what they did was build new schools for them.

Senator **Kennedy**. Have you talked to the students from Jackson State?

Secretary **Finch**. This is a matter of elementary and secondary education, as well as higher education.

Senator **Kennedy**. But if you have had a chance to visit, they can list the comparisons. Senator Mondale and others from this committee have gone down and can speak much more authoritatively on that. The students talk about the severe contrast in terms of just basic facilities where they are attending school—and this tends to hold true at all levels.

Mr. **Veneman**. It would be my reaction if we wanted to go into a Federal aid program for elementary school construction it should be separate from this. The Secretary is absolutely correct, if we were trying to put this in as an authorization project that we would have nothing but a bunch of school districts coming in asking for money. And the way we are going to achieve integration is through attitudes. The ability of the teacher to have a right frame of mind to teach and integrated attitude of the people in the community. And you can have a new classroom and the greatest teachers aids in the world and still have a very segregated situation.

Senator **Kennedy**. No one is talking about doing one at the exclusion of the other. It is a question of whether there should be at least some provision in trying to meet the total need in terms of construction, perhaps through pilot programs.

Mr. **Veneman**. I can see situations where they have attempted to close down probably relatively good black facilities and used Federal money to build a new one.

Senator **Kennedy**. You wouldn't want to suggest that construction isn't a very significant part of meeting the need for quality integrated schools?

Secretary **Finch**. We are simply saying that ought to be a subject of another bill and that is the point of difference at this point.

Senator **Kennedy**. Do you anticipate suggestions on construction? Does the administration have a program?

Secretary **Finch**. The Commissioner's office has been concerned with that.

Mr. **Allen**. Down the road we do.

Senator **Kennedy**. How far down?

Mr. **Allen**. I hope it is not very far.

Senator **Mondale**. Would the Senator yield?

Senator **Kennedy**. Yes.

Senator Mondale. One thing that struck me is the possibility of providing authority, perhaps even direction to establish one or two educational parks. As you know, many of the top educational schools have proposed educational parks, Philadelphia and others. But the capital cost is so tremendous that they can't undertake it. Wouldn't it be well for us to have one or two of those fully funded to see what comes out?

Secretary Finch. We already have approved by both Houses $25 million for experimental schools and that is one of the projects or prototypes we will be working on in that $25 million.

Senator Mondale. I understand the capital cost of one of those educational parks, is something like $15 million. And I would like to see one or two of those tried.

Mr. Allen. I would just like to add to the point that Senator Kennedy is raising, that there isn't any question, and I am talking now from experience in New York, that by and large the poor child in the city goes to those buildings that are in the areas of segregation, so-called ghetto areas. And one of the ways to do something about this is to try to bring about integration, because then you get all the people in that community and in that State concerned with the quality of the buildings. The cause and effect is hard to determine here. But there is no question that the quality of school buildings by and large, in most States, and I speak now certainly of New York State, the quality of buildings is poor, the equipment is probably poor in the area.

Senator Dominick. Would the Senator yield?

Senator Kennedy. Yes.

Senator Dominick. Commissioner, do you have any idea of the proportion of school bond issues that have been rejected by the citizens of this country in the last year?

Mr. Allen. Yes, sir; it has gone up very rapidly.

Secretary Finch. By about two-thirds, I think, Senator.

Mr. Allen. Something like 70 percent over the last 5 years, very substantial.

Senator Kennedy. Mr. Secretary, could you give us any idea as to how much of these funds will be used for the Indians or Mexican-Americans? Have you done any kind of projection about that?

Secretary Finch. Indians and Mexican-Americans are both included in the definition of minority. Therefore districts with substantial numbers of Indians or Mexican-Americans might be eligible under categories 2 and 3 as well as 1. Indians on reservation schools would not receive the benefits of the program. They are under the Bureau of Indian Affairs.

Senator Kennedy. Will they participate at all, the Indians?

Secretary Finch. Off reservations, yes they do.

Senator Kennedy. But they won't participate on the reservation?

Secretary Finch. Not the BIA schools, no, sir.

Senator Kennedy. Could you tell us what your reasoning is on that?

Mr. Veneman. It is all Federal funds now.

Senator Kennedy. That is right. But I mean in terms of upgrading the schools and quality of education on reservations—I am just wondering whether you could give us the reasons. I will be glad to submit some questions on that to get at greater detail.

Secretary Finch. I would like to discuss it with our staff. We went through a long discussion about where we had to cut back.

Senator **Kennedy**. What about in terms of Mexican-Americans and off-reservation Indians?

Secretary **Finch**. They are fully included.

Senator **Kennedy**. Do you have any idea as to what proportion of the $1.5 billion will be used for these groups?

Secretary **Finch**. We can get you the figures. They are simply included in the minority terms as used in the bill. But if you want the specific projections as to what it might be, we will get that for you.

Senator **Kennedy**. I would like that, if you could. I know these are difficult to go through, but I think it would be useful. I would certainly like to have those figures if you could submit them to us at a later time. In terms of off-reservation Indians and Mexican-Americans, I think it would be generally helpful if we could get an idea of what your projection is on how these funds are going to be used and where they are going to be spent.

(The material subsequently supplied follows:)

ALLOCATIONS TO SPANISH-SURNAMED AMERICANS AND INDIANS

We cannot predict exactly how much money will be allocated to projects for Spanish-surnamed Americans and Indians because grants under the program are made on the basis of project applications and not on the basis of a formula. We would hope to allocate funds to such projects in a proportion roughly equivalent to the proportion of these groups in the total eligible minority student population.

Secretary **Finch**. The point is that because it is a project grant situation we can't project what a district might receive. In an area where you had an enclave of Mexican-Americans, that the school district might operate to help that school or several schools in a project grant. These would have to be very tentative projections because it is, after all, project grants and not a formula grant that we are dealing with here.

Mr. **Veneman**. If it would be helpful, I can give you a breakdown on how we propose to spend the $150 million.

(See "Justifications of Supplemental Appropriations Estimates for Committee on Appropriations," p. 37.)

Senator **Kennedy**. If you could.

Secretary **Finch**. In Texas, for example, in the desegregated school district there, 25 percent are Spanish-surnamed Americans who are involved in that State alone to be eligible.

Senator **Kennedy**. Thank you, Mr. Chairman.

Senator **Pell**. I don't mean to embarrass the Secretary in any way, but I am still bothered by this point about your present capacity. Yesterday when you appeared before the House, the printed testimony styled you as the Counselor to the President.

Secretary **Finch**. That was a little premature, Mr. Chairman.

Senator **Pell**. It is an important point. I ask you to forgive me, but are you being paid today at $60,000 or $42,500?

Secretary **Finch**. My wife asked me the same question this morning. She sent back everything she bought over the weekend.

I am the Secretary and will be until my successor is confirmed.

Senator **Pell**. Thank you very much.

Senator Mondale?

Senator **Mondale**. Mr. Secretary, your appropriations request and the proposed legislation provide that aid can go to approved plans determined to be adequate under title VI of the Civil Rights Act or those which have been undertaken pursuant to a final order of the court of the United States. There are about 300 school districts which are operating freedom of choice programs under final court orders, even though later the U.S. Supreme Court has declared those orders unconstitutional.

Under any circumstances will projects be approved for such districts?

Secretary Finch. The district might be eligible. Again we would have to look at the merits of the program and if it did not comply with title VI I can't see, even if it had been under a State court order, that we could possibly fund it.

Senator Mondale. Would you object to a prohibition written into the law to prohibit project approvals for freedom of choice school districts?

Secretary Finch. I personally would not. I can't conceive of a situation where it would be allowed, practically, but that would be up to the committee.

Mr. Pottinger. If I may address myself to that point briefly. Under title VI, and constitutional standards, freedom of choice, as such, as you know, was not illegal if it achieves constitutional rights, that is to say the school desegregation.

Senator Mondale. How much of them do you think do that?

Mr. Pottinger. Very, very true. But all I am saying is that the appropriate way to deal with that problem would be to not fund the district which is not achieving that result and to update the court order through the Justice Department proceedings.

Senator Mondale. In the meantime, would you agree not to fund projects for the districts?

Mr. Pottinger. I think the Secretary has answered that question. Yes; we will agree to that.

Senator Mondale. The second point I want to make is the standards which the bill sets out for de facto projects. As I understand it, there are two triggers here. One, the school district has to have 50-percent minority; or, two, it must have at least 10,000 minority students.

Secretary Finch. Categories II and III.

Senator Mondale. Either or?

Secretary Finch. Yes.

Senator Mondale. By those standards, are you not denying the assistance to the very school districts in which integration is most possible?

Secretary Finch. No; we are, as I said, trying to address our attentions to the districts where the need is the greatest. They are not mutually exclusive concepts.

Senator Mondale. As your figures show, there are about as many children located in the school districts in which the minorities are in the minority as in these so-called impacted districts which would receive preference under this proposed legislation. It seems to me that it is in the other districts where integration is most easily achievable and that we at the very least ought to have an equal effort in both categories.

Mr. Veneman. I think category II would cover that, Senator. Because there an individual school that was over 50 percent would be entitled to funds under the act.

Senator **Mondale.** Aren't we creating a preference, though, for the other kind of districts when you take II and III together?

Secretary **Finch.** The second is one or more schools with a substantial but less than 50-percent minority enrollment which are in clear danger of becoming racially isolated.

Senator **Mondale.** Let's take a typical community, Minneapolis. You have listed here category III eligibility. Minnesota has no districts that are eligible.

Secretary **Finch.** They would have been picked up under category II.

Senator **Mondale.** But if you are eligible in both categories, don't you receive preference over a district that is eligible for only one?

Secretary **Finch.** Not necessarily. You come in with your application for a project grant, so long as you fall under any one of the categories.

Mr. Chairman, do you want me to return this afternoon?

Senator **Pell.** I have no more questions.

Senator **Mondale.** I have just one observation. I am going to submit several questions in writing. I do hope that we do not exclude Indians in the thrust of this legislation, because the BIA, as you know, takes almost an official policy of being unconcerned about urban Indians. And some of the most severe integration problems in our country can be found with urban American Indians.

Secretary **Finch.** As promised in this request of Senator Kennedy's I think we should develop our thinking as it developed in the funding not only BIA and title I but give you a response to that that you can weigh in your deliberations.

Senator **Pell.** Senator Dominick?

Senator **Dominick.** Mr. Chairman, I thank you and I will be very brief.

Mr. Secretary, I gather that section 7 gives you a rather broad discretion as to what applications will be accepted by it and which would cover some of the problems that Senator Mondale brought up; in other words, you have a discretion under section 7?

Secretary **Finch.** That is true, Senator.

Senator **Dominick.** Secretary Finch, I don't know whether you or anybody else can answer this, maybe you can: Has the question of whether compensatory discrimination is constitutional ever been decided by the courts?

Perhaps they could give me an answer later on. I don't want to rush them on that. It is a complicated problem.

Mr. **Pottinger.** Could we give you a memorandum on the subject? The courts have ruled in cases involving attempts to overcome prior racial discrimination through a compensatory program that that compensatory program is not in and of itself discriminatory. It must be based on prior discrimination or the effect of prior discrimination.

Senator **Dominick.** I raised the question because I have somewhat the same concern as was expressed by the chairman of the constitutionality of the act which spends taxpayers' money in areas defined entirely by racial criteria. I think this may be a problem before we are through and I certainly want to get as much information on it as I can.

I thank the Chair.

(The information subsequently supplied follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

Date: JUL 14 1970
Reply to Attn of:

Subject: Emergency School Aid Act of 1970

To: Mr. Creed C. Black
Assistant Secretary for Legislation

Our opinion has been requested as to the constitutionality of the method of allotting funds contained in the proposed Emergency School Aid Act of 1970 (S. 3883, 91st Cong. 2nd Sess. (1970)), which deals with assistance to desegregation and to racially impacted school districts. Section 4(a) of the bill provides:

> From the sums appropriated pursuant to section 3 for any fiscal year, the Secretary shall allot an amount equal to two-thirds thereof among the States by allotting to each State $100,000 plus an amount which bears the same ratio to the balance of such two-thirds of such sums as the adjusted number of minority group children . . . in the State bears to the adjusted number of minority group children in all of the States.

The term "minority group children" is defined in section 9 (for the purposes of section 4) as:

> . . .children, aged five to seventeen, inclusive, who are Negro, American Indian, or Spanish-Surnamed American. . .

The term "Spanish-Surnamed American" is defined in the same section to include "persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry".

We have concluded that this method of allotting funds, although based in part on racial classification, is permissible.

The proposed statute recognizes racial distinctions in several respects. First, it is implicit in the entire scheme of the statute that racial isolation in elementary and secondary schools and racial discrimination, both past and present, practiced in those schools pose a national problem. Second, it provides for Federal grants to projects designed by local agencies to meet this problem, and therefore will necessarily require Federal administrators to consider racial factors in judging the relative merits of various proposed projects. Third, in providing for the distribution among the various States of the total amount of project funds available, the proposed legislation would use a racial formula.

Your question regarding the constitutional propriety of the formula for allocating funds among the States necessarily involves the question of the constitutionality of the statute as a whole. This legislative proposal, in its very purpose, and by its terms, is racial. The legal question is whether the racial considerations are of such a nature as to involve a denial of equal protection of the law, insofar as the statute would encourage the States to act upon racial considerations, or would involve a deprivation of due process of law, insofar as it requires Federal officials to use racial considerations in administering a grant program.

It cannot be gainsaid that racial classifications generally are "constitutionally suspect" and "subject to the most rigid scrutiny" when found within the frame of governmental action which restricts freedom or imposes burdens. See McLaughlin v. Florida, 379 U.S. 184, 192-3 (1964); Loving v. Virginia, 388 U.S. 1 (1967). It is equally clear, however, that the Constitution does not require complete color blindness. See, e.g., United States v. Jefferson County Board of Education, 372 F.2d 836, 876-7 (1966), aff'd en banc, 380 F.2d 385 (5th Cir.), cert. den., 389 U.S. 840 (1967). Thus, the incidental recognition of racial distinctions for an administrative and benign purpose is not precluded by the Constitution. Indeed, such distinctions are made in taking and publishing the U.S. Census, and have been judically sustained in the collection and maintenance of other official data. Hamm v. Va. Board of Elections, 230 F. Supp. 156 (E.D. Va. 1964), aff'd, Tancil v. Woolls, 379 U.S. 19 (1964).

Even where governmental action based on race imposes burdens on certain citizens to the advantage of others, such racial distinctions have been sustained by the courts where they were necessary in order to perform some overriding constitutional duty, such as the correction of racial discrimination in education (U.S. v. Montgomery Board of Education, 395 U.S. 225 (1969); U.S. v. Jefferson County Board of Education, supra; Wanner v. County School Board, 357 F.2d 452, 455 (4th Cir. 1966)). We believe it was largely on this basis that the Attorney General sustained the use of racial considerations in the "Philadelphia Plan" to promote equal employment opportunity under Executive Order 11246, saying

> The legal definition of discrimination is an evolving one, but it is now well recognized in judicial opinions that the obligation of nondiscrimination, whether imposed by statute or by the Constitution, does not require, and in some circumstances, may not permit obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria.

Even where there is no overriding duty to correct past constitutional wrongs, there is judicial support for the view that consideration may be given to racial factors in arranging educational services where such considerations are necessary in order to provide equal opportunity through the educational system to children who have been educationally deprived by society because of their race. Thus, courts, both State and Federal, have sustained State-supported efforts to promote racial integration in the public schools even though existing racial isolation or segregation could not be attributed to official action and was therefore not itself unconstitutional. Pennsylvania Human Relations Comm. v. Chester School District, 233 A.2d 290 (S.Ct. Pa. 1967); School Committee of Boston v. Board of Education, 227 N.E. 2d 729 (S.Ct. Mass. 1967), appeal dismissed, 389 U.S. 572 (1968); Booker v. Board of Education of Plainfield, 212 A.2d 1 (S.Ct. N.J. 1965); Jackson v. Pasadena City School District, 382 P.2d 878 (S.Ct. Calif. 1963); Adabbo v. Donovan, 209 N.E. 2d 112 (N.Y. Ct. App. 1965), cert. den. 382 U.S. 905 (1965); Tometz v. Board of Education, 39 Ill. 2d 593, 237 N.E. 2d 498 (1968); Offermann v. Nitkowaki, 378 F.2d 22 (2d Cir. 1967).

We believe that the court decisions sustaining State efforts to achieve racial balance are decisive of the question which you have presented to us. If States may constitutionally adjust school enrollments on the basis of race in order to alleviate educational problems caused by racial imbalance and in order to educationally compensate children of races who have been heretofore educationally deprived, then, certainly, the Federal Government can contribute to such effort through a grant program such as that proposed. We think it equally clear that if the Federal Government may constitutionally participate in such an effort through the use of Federal funds, it may provide for the allocation of such funds in a manner which will best meet the need, which in this case may properly include consideration of race.

Sidney A Saperstein

Sidney A. Saperstein
Acting General Counsel

Senator **Pell**. Thank you very much, indeed, Mr. Secretary.

In accordance with the previous order, the members of the select subcommittee and the subcommittee will submit questions, and we would like answers for the record.

Secretary **Finch**. Right.

If the Chair would allow, the Commissioner has a statement he would like to enter into the record.

Senator **Pell**. We would welcome it and it will be inserted in the record.

(The statement by Mr. Allen follows:)

STATEMENT ON "EMERGENCY SCHOOL AID ACT OF 1970," SUBMITTED TO GENERAL SUBCOMMITTEE ON EDUCATION, HOUSE OF REPRESENTATIVES, BY JAMES E. ALLEN, JR., ASSISTANT SECRETARY FOR EDUCATION AND U.S. COMMISSIONER OF EDUCATION, JUNE 8, 1970

Mr. Chairman and Members of the Subcommittee: I welcome this opportunity to add my own words of strong support for the President's "Emergency School Aid Act of 1970" which Secretary Finch has outlined before your Subcommittee.

The goal of this legislation is to help speed the elimination of racial segregation and discrimination in the schools of our Nation. It represents one of the most important actions ever proposed by any Administration toward making the principle of equal educational opportunity a reality for all children and youth.

From its beginning our Nation has cherished this principle and has made great strides toward ensuring its practice. In the present period in our history, the greatest single barrier to further progress in achieving this goal is, I believe, the continuing existence of racially segregated schools. Such segregation is not only educationally unsound but simply makes a mockery of the democratic concepts upon which this Nation was founded.

The elimination of racial segregation in education, regardless of cause, is the responsibility of all citizens and of all levels of Government. It is the special responsibility of those who govern and administer our schools and I have recently called upon all educators in the country not only to persevere in their efforts to eliminate segregation in the schools wherever it exists, but to take the lead in helping the public to understand the values that are at issue, the harmful educational effects of segregation, and the necessity for its elimination if the schools are to serve equally well all the people in America.

One of the greatest handicaps facing school systems in the elimination of segregated schools and in the achievement of racially integrated education is the lack of funds to carry out desegregation plans and to make the most of the educational advantages offered by desegregation.

The legislation proposed by the President will offer crucial support and relief for the school systems struggling to work out a constructive course of action toward the achievement of education of quality in an integrated setting. Not only will the funds to be provided help support the added costs which usually accompany the implementation of a sensitive and intelligent desegregation effort, but they will feed the growing commitment at all levels to making our schools fulfill the promises of equal educational opportunity for all.

Thank you.

THE UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., July 6, 1970.

Memorandum for Hon. Claiborne Pell.

Subject: Emergency School Aid Act.

When Secretary Finch and I testified before your Subcommittee June 9 on the Emergency School Aid Act, he promised to submit a memorandum suggesting several changes. He specifically mentioned the addition of an express prohibition in Section 6(g) against the expenditure of funds "to establish or maintain the transportation of students solely to achieve racial balance." We feel that such language would provide assurance that the Federal Government would not impose transportation requirements for the sole purpose of achieving a mathematical racial balance. It is not the intent of this language to preclude the exercise of discretion to assist transportation which is supported by substantial educational or other considerations.

We would suggest three other changes. One involves the definition of minority children in Section 9(d). We would limit the definition to those "who are of Negro, American Indian, Mexican, or Puerto Rican origin or ancestry," dropping the authority for the Secretary to include other children who are from environments where the dominant language is other than English and who, as a result, are educationally deprived. While the objective of the broader language in the bill is laudable, authority already exists in ESEA Titles I and VII to deal with the problems of educationally deprived and bilingual children. We believe the focus of this bill is more appropriately limited to the problems of desegregation and racial imbalance.

Section 7(a)(4) of the bill contains a provision, not included in our legislative recommendations, to the effect that local education agencies submitting proposals must indicate that they have made appropriate provision for the participation of racially isolated private school children in programs to overcome racial isolation. There is already sufficient discretion in the bill to include private school children in programs wherever local education agencies determine that this would promote the objectives of the bill, and we felt this was sufficient in terms of the primary focus on the critical needs of desegregating public schools.

Section 12 would establish a Presidentially-appointed National Advisory Council to review the administration of the Act and recommend improvements.

We feel that this is unnecessary in view of the short-term emergency nature of the legislation.

We would appreciate the Subcommittee's consideration of these suggestions.

JOHN G. VENEMAN, *Under Secretary.*

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., July 24, 1970.

Hon. CLAIBORNE PELL,
U. S. Senate,
Washington, D.C.

DEAR SENATOR PELL: I am writing to indicate my full concurrence with the testimony of my predecessor, Robert Finch, on the Emergency School Aid Act of 1970. After reviewing the record of his testimony, I would only add my own thanks to you for co-sponsoring this important piece of legislation with Senator Javits, and my hope that the Committee on Labor and Public Welfare will take prompt and favorable action.

Since Mr. Finch's appearance, some of the witnesses before your Committee have suggested various amendments to prevent the use of funds to perpetuate various forms of segregation or for indirect subsidy to private segregated academies. I want to reaffirm Mr. Finch's pledge that this Department would not permit such uses of funds under the Act in any case. At the same time, we would be pleased to cooperate with the Committee in formulating language to prevent such specific abuses and to assure that funds will be used where they are most needed.

If I can be of further assistance in this matter, please let me know.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

U. S. SENATE,
SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY,
Washington, D.C., June 19, 1970.

Hon. ROBERT H. FINCH,
Secretary, Department of Health, Education, and Welfare,
Washington, D.C.

DEAR MR. SECRETARY: I regret that other duties prevented me from being present when you appeared before the joint committee meeting of the Subcommittee on Education of the Senate Labor and Public Welfare Committee and the Select Committee on Equal Educational Opportunity on June 9, 1970

I have reviewed the transcript of your testimony and your dialogue with the Senators, however, and would like to have your response to several questions for the purpose of clarification of and enlargement on your testimony.

You stated on page 9, ". . . the title of this bill is the Emergency School Aid Act of 1970 . . . . We are here trying to deal with an immediate short term crisis . . . . We need to help these districts that are now caught up in the desegregation process . . . . And we have to recognize that racial isolation has this adverse effect on the quality of education on all children." I do not understand how de facto segregation presents an "emergency." It is my understanding that de facto segregation is a subject that the Select Committee is dealing with at this time and has not found a true emergency nor has it found any easy recommendations to date. The emergency, it would seem to me, lies in the districts presently being forced to integrate. If de facto districts in the North are forced to integrate, then I see that they, like the South, might face an emergency. Having integration and asking for funds to cope with problems is quite different than offering to provide integrated experiences if you will give us the money to do so.

Please set out the emergency areas covered by S. 3883.

In an exchange between Senator Mondale and yourself, on pages 38 through 47, Senator Mondale shows great concern that funds may flow to schools having only superficial integration. Yet category 3 in your bill provides funds to go to schools that are not operating even superficially on an integrated basis. If the bill is truly designed to deal with emergency situations then it would appear that the thrust of the bill should be limited to relate to emergency areas. I believe the other, non-emergency problems would be better handled in the normal legislative process on a long-term basis.

How do you justify spending emergency funds to "ease desegregation" where the school refuse to integrate their classrooms on a superficial basis?

On page 18 of the transcript there is reference to one-third of the funds authorized under S. 3883 being reserved for expenditure at your discretion. I agree with Senator Pell that this is an inordinately high percentage of funds to be allowed to be spent without any control by Congress whatsoever. I believe that the legislation would be much more effective if the funds were directed to court ordered districts and those districts integrated under Title VI agreements. Even though I believe race to be an inappropriate basis for legislation, it would be consistent wtih the stated purpose of the bill to allocate the monies proposed on a basis of the percentage of minority groups in the systems. If the amount of money requested is insufficient to provide proportionate allocations to all desegregated districts, then a request for additional funds would appear to be in order.

There is a reference to a reservation of up to one per cent of the funds for evaluation of the effectiveness of programs. I believe that evaluation of programs, particularly those in the innovative category, is essential. As you know, the term "innovative" is susceptible on many interpretations, and I believe the Congress needs to be made aware of the effectiveness of such programs.

Would you object to a requirement that these evaluation funds be spent? Would you object to an increase in the percentage required to be spent for evaluation?

On page 25 of the transcript Senator Pell expresses his belief that it is wrong to call the "problems of segregation in schools" an "immediate and emergency problem." I concur wholeheartedly with this except where there is forced integration. Such non-emergency legislation is precisely the subject of Titles 2 and 3 as presently drafted. An emergency is, however, occasioned by forced or pressured desegration, and provision for additional federal funds may not only be appropriate but also necessary to meet that federally imposed emergency.

On pages 28 and 29 of the transcript Mr. Veneman mentioned teacher training, teacher aides, and minor remodeling repairs under category 1. The information I have received to date indicates that teacher training, or retraining, and teacher aides to maintain classroom discipline and supplemental teaching, are the most important needs at this time. On pages 29 and 30 Senator Spong and you go into additional categories for which these monies could be spent. It would appear to me that a limitation to retraining teachers and hiring additional supplemental classroom personnel is a known need which could easily absorb all the funds you have asked for, if we are truly concerned with the children in newly desegregated situations. I find it difficult to justify authorizing the Secretary of Health, Education and Welfare to have the discretion to give aid to some newly desegregated schools and denying it to others.

Would you strongly object to limiting the uses of the emergency funds to hiring and training of personnel? What additions would you make to these areas of expenditure?

On page 31 Senator Pell mentions the obvious political overtones inherent in the use of discretionary funds. This, of course, supports my opposition to this proposal to the extent it would inequitably aid selected school districts and by definition provide unequal educational opportunity.

On page 32 Mr. Veneman states that "(these monies are) to overcome the effects of past segregation." I rather believe that the purpose of these "emergency" funds is to overcome the effects of forced integration.

On page 35 of the transcript Senator Mondale objects to most of the money going to districts that have been forced to desegregate rather than being used to encourage integration. This approach is, I believe, typical in large sectors of the country today, and ignores the fact that many, if not most, of the districts that are forced to integrate have very high percentages of minority groups. It ignores the fact that even greater problems exist in forced integration situations than in volunteer integration situations. It reflects a lack of concern for minority groups and the problems of integration. It is comparable to the sort of thinking that denys lunches to impoverished minority group children because there is not complete compliance with arbitrary integration programs. Hopefully the Administration has changed this approach and is now more interested in the welfare of the school children than in forced adherence to some federal official's idea of the running of local school districts.

I would tend to agree with your posititon indicated in the dialogue among Senator Mondale, Mr. Pottinger and yourself on pages 38 to 46 regarding complaint and enforcement procedures and the effectiveness of the Department of Health, Education and Welfare. The information I receive from my state indicates that the Department of Health, Education, and Welfare is most stringent, even at times unreasonable in requiring adherence to its regulations. It would seem that the effort to draft legislation to eliminate the possibility of abuse would only delay enactment of the legislation and prevent funds from flowing to aid children in newly desegregated districts who are, I understand, in large part black children in the districts to be integrated for the first time this Fall.

Along the line of actual concern for the needs of students, as opposed to ideological and idealistic statements, I share the concern expressed by Senator Prouty on pages 59 and 60 of the transcript with the situation under Title I whereby the relatively poorer people of the South receive a lesser amount of funds because they do not have as much money to spend on education. This is, of course, illustrative of the old axiom that the poor get poorer and the rich get richer.

Please furnish me a copy of the charts requested by Senator Prouty.

On page 61 of the transcript Senator Javits points out that "55 per cent of the minority children in these racial isolation situations are in 17 southern and border states." Do I correctly understand from the testimony on page 37 that 49 per cent of students are found in these same regions? Would you please file for the record up-to-date figures comparing the percentage of racial isolation situations in the South only, eliminating the border states? I conclude from your testimony that the number of students from racially isolated situations in the South and border states is approximately equal to the nationwide percentage. It is my understanding that these figures will change drastically this Fall. Therefore, I would appreciate your filing with the Equal Educational Opportunity Committee up-to-date figures following September 1970, so that the record will reflect the true state of racial isolation in each sector of the country. I cannot over-emphasize my desire to obtain the information at the earliest possible date, preferably prior to January 1971, so as to enable concerned Senators "to bring about an end to (racial isolation)" in sectors of the nation other than the South.

On pages 64–67 Senator Dominick reflects his concern with all poor people regardless of their race. I share his cornern. I do not think that this legislation should be based on race, and I do not see that this would be any more constitutional than other racially based legislation. It may be that the true emergency funding portion of your bill, based on school districts operating under open court orders and compliance orders, which is not racially based legislation, would be permissible. In any event, this particular legislation would be no more based on race than Title VI and court orders which occasion the problem. Do you agree that long-range educational goals would be better based on economic levels than on race?

I am concerned that in 91 pages of testimony there is so little talk of education. The conversations, except for one question by Senator Spong, seemed to concentrate on every aspect of this bill except what you propose to do to aid the education of our children in newly desegregated situations. This means that the problems of our children are likely to be ignored, and other factors, such as who gets the money, will be stressed. It seems to me that we should be more concerned about improving educational opportunities than worrying about potential localized abuses. Am I correct in assuming that is the object of your proposed legislation?

Sincerely yours,

JOHN L. MCCLELLAN.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 3, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: I am writing in reply to your letter of June 19, to former Secretary Finch, concerning his testimony before the Subcommittee on Education of the Senate Labor and Public Welfare Committee and the Select Committee on Equal Educational Opportunity.

Your first question asked us to discuss the emergency areas covered by S. 3883, Emergency School Aid Act of 1970. The bill is addressed to both *de jure* and *de facto* school districts to help them overcome the educational disadvantage associated with segregation. Educational disadvantage is the emergency to which the bill is addressed.

Your second question asked for our justification for spending emergency funds under Category Three "to ease desegregation where the schools refuse to integrate their classrooms on a superficial basis." The overriding purpose of Category Three is to encourage, to the greatest extent possible, desegregation of educational activities in areas with high concentrations of minorities. Activities which contribute to this end are far from superficial. To the contrary, they are the best means available to us for achieving progress toward desegregation in our major urban centers.

Your third question was, "Would you object to a requirement that these evaluation funds be spent? Would you object to an increase in the percentage required to be spent for evaluation?" We fully agree with your emphasis on the importance of evaluation. We are committed to spending the full amount of funds authorized for this purpose, but feel the one percent requested is ample for this purpose.

Your fourth question was, "Would you object to limiting the uses of emergency funds to hiring and training of personnel? What additions would you make to these areas of expenditures?" We feel that hiring and training of personnel are particularly important, but are only a part of any comprehensive approach to the problems attendant to effective desegregation. A number of other important activities might include, for example, community relations programs, special remedial services, curriculum revision, special extracurricular activities, and comprehensive planning.

You requested a copy of the chart comparing the funding under Title I of the Elementary and Secondary Education Act for the seventeen southern and border states and the other states. You also asked whether 49% of minority students are located in the southern and border states. This is correct. The references of Senator Javits to the 55% of minority students in racially isolated situations relates to the percentage of minority students in schools that have 50% or more minority enrollment. As soon as accurate enrollment figures are available this fall, we will file with the Committee, as you requested, information on the percentage of children in racially isolated situations in the Southern states.

Your final question asked whether the objective of our proposed legislation is to be more concerned about improving educational opportunities, rather than "worrying about potential localized abuses." You are correct that equalizing and improving educational opportunities are the basic objectives of the Emergency School Aid Act. In administering the Act, however, we would take all possible steps to assure that localized abuses do not occur. As Secretary Finch told the Committee, we have no intention of allowing federal funds to be used to subvert the fundamental purpose of providing equal educational opportunities for all children.

Thank you very much for your thoughtful comments. I hope this letter answers the questions you have raised.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 3, 1970.

Senator WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: Attached are answers to the questions you raised regarding the Emergency School Aid Act and related issues in your letter of June 9 and 18. I apologize for the delay in responding to your request, but it was necessary to coordinate each answer with the Office of Education, the Office of Civil Rights and with the Department of Justice.

If I can be of any further assistance to you, please let me know.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

ANSWERS TO QUESTIONS OF SENATOR MONDALE—RE EMERGENCY SCHOOL AID ACT

1. Question.—Section 5(a)(1) of the Bill which describes Category I assistance refers to "special programs or projects designed to enhance the possibilities of successful desegregation."

(*a*) Please define and state the components of "successful desegregation."

Answer.—Successful desegregation involves the full implementation of a plan for desegregation and compliance with Title VI of the Civil Rights Act of 1964. It involves a reasonable likelihood of achieving a permanently integrated school system from which all students benefit and which necessarily entails community support, minority and non-minority student support, quality educational services for all students, and teachers who can communicate with and stimulate all students.

2. Question.—A number of types of abuses of court orders and ways to circumvent the spirit if not the letter of desegregation plans are quite widely reported in the South. Attached is a list of such abuses which have been brought to my attention. Please respond to the following questions with respect to each:

Questions About Abuses

With respect to each or all of these eleven situations:

1. Would a school or school district maintaining such practices be considered to be "enhancing the possibilities of successful desegregation" under Section 5(a)(1) of the Bill?

2. If abuses such as those I have mentioned are still going on next fall, will such districts be funded?

3. Will a school district be eligible for the $150 million emergency appropriations fund if it has engaged in such practices this year?

4. How will HEW find out if districts are engaging in such practices?

5. (*a*) How do you plan to guarantee that federal money will not be spent in ways that are designed to discriminate against minority children in classrooms or extra curricular activities or elsewhere inside a desegregated school?

(*b*) What monitoring procedures will be set up for this purpose?

6. Will a school district in which schools maintain segregated classes be funded? Will such districts be prohibited from receiving funds? If not, how is this consistent with the President's statement introducing this bill that "from an educational standpoint what matters most is not the integrated school but the integrated classroom"?

7. What guarantee is there that this money will not indirectly assist private "segregated academies" through gifts, loans, or sale of school district equipment, supplies or services to private schools and replacing such items in public schools with funds under this program?

8. Will a school district be funded which is under court order but is taken to court, whether by the Justice Department or by private attorneys and charged with either failing to carry out its desegregation plan or with engaging in one or more of the practice related above.

List of Abuses

1. Segregated classes within a desegregated school.
2. Segregated extra curricula activities, such as—
    (*a*) the exclusion of Negroes from organized athletics.
    (*b*) separate bus trips for blacks and whites.
    (*c*) exclusion of blacks from student government.
    (*d*) exclusion of blacks from proms, dances, cheer leading, etc.
3. The transferring or selling of equipment to private schools.
4. The closing of well constructed, modern black schools as the alternative to sending white students to such schools or the use of mobile or portable classrooms to supplant the closed black school.
5. The authorization of deductions under State income tax laws to reimburse, indirectly, parents for tuition paid to all white private academies established for families who refuse to attend integrated schools.
6. The testing and tracking of pupils resulting in their resegregation by race either in separate schools or separate classes in the same school.
7. The lowering of millage rates or state or local public financial aids to public schools as private school enrollment increases.
8. The use of Federal money to supplant reduced local support for public schools which have desegregated.
9. The operation of schools in a district under an old freedom of choice plan which has not been updated or revised under court order.
10. The firing and/or demotion of black teachers, school principals or administrators.
11. The imposition of new teachers qualifications standards not required before desegregation and resulting in the demotion or dismissal of black teachers.

Answer.—Certain of the abuses fall generally in the category of "in school" discriminatory practices which, subject in some cases to further definition, are prohibited under the "Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964." To the extent that a violation of Title VI is involved, assistance to school districts practicing such abuses would be precluded quite apart from the language of the Emergency School Aid Act. (Items 1, 2, 6, 10 and 11 clearly fall within this category.)

In this regard, the Department's Office for Civil Rights is currently in the process of preparing a policy statement dealing in greater detail with these practices, which will be furnished to affected school districts to be used as a guide in determining compliance. This statement will also be useful in administering the Emergency School Aid Act.

The following points are in response to questions regarding abuses 1, 2, 6, 10 and 11

1. As a technical proposition, the term "successful desegregation" as used in the proposed Act applies to programs or projects eligible for funding, not to a school district. A project, however, could not be said to be "designed to enhance" desegregation if the system is engaged in any of the listed abuses.

2. If a school district is found to be practicing these abuses at the opening of the school year, and fails satisfactorily to correct them, the district would not be eligible for assistance in view of Title VI of the Civil Rights Act.

3. School districts implementing desegregation in accordance with the law next September will be eligible to apply for the initial $75 million provided in the 1971 Education Appropriation. Such districts include those which implemented interim steps during the 1969–70 school year, as well as those which had submitted no acceptable plan for 1969–70; in all these cases the cited abuses may have existed, inasmuch as the districts had not yet implemented a terminal plan for effective desegregation. Existence of these abuses at the time of application for assistance under the program would be a basis for failure to fund the project.

4 and 5. In applying for funds under the initial $75 million, districts will be required to give assurance that students are assigned to classes without regard to race, that extra curricular activities and other school programs are operated on a non-discriminatory basis, that teachers and staff are treated without regard

to race, and that all practices and procedures, such as for example testing, are not employed so as to discriminate on account of race. Districts which apply for funds at a later date under the authorization bill, if enacted by Congress, will have to meet the same requirements. In the fall the Department will be monitoring desegregating school districts and efforts will be made to investigate with respect to in-school abuses. This information, as well as other information which may be available to the Department, will be utilized in: (a) checking compliance of districts funded for programs under the initial $75 million appropriation, which may take effect before the start of the school year; and (b) checking compliance of districts during the school year prior to aproving grants.

Under general terms and conditions, grants may be terminated during the grant period for failure to comply with the applicable law and the regulations.

6. Answered above—will not be able to receive assistance.

7. Under the Javits Amendment (Amendment No. 737 to H.R. 16916 (June 24, 1970)), a school district which engages or has unlawfully engaged in the past in the gift or sale of property to private segregated schools would be rendered ineligible for assistance under the $75 million program. Even without this limitation, the Department would administer that program and the Emergency School Aid Act so as to avoid indirect assistance to "segregated academies." Such a practice would not be consistent with the purposes of the act. Nor could such a district divest itself of property and still maintain that it was incurring "added costs" under Sec. 5(c).

8. In the event the Justice Department or a private party files suit against a school district for failing to implement a Title VI plan for desegregation or a court order, or for engaging in discriminatory practices, the Department would evaluate the matter on a case-by-case basis and if grant conditions regarding compliance with Title VI were violated, a foundation for action would be present.

The following points are addressed to abuses 3, 4, 5, 7, 8 and 9 which are unrelated abuses and each must be treated separately

Abuse No. 3.—The transferring or selling of equipment to private schools.

Answer to Questions

As indicated above, the Javits Amendment would preclude the granting of assistance to school districts which transfer or sell equipment to private segregated schools or unlawfully have done so. Our program regulations for the $75 million will carry out the intent of the Javits amendment, and will serve as a basis for the development of regulations for the Emergency School Aid Act.

Abuse No. 4.—The closing of well-constructed, modern black schools as the alternative to sending white students to such schools or the use of mobile portable classrooms to supplant the closed black school.

Answers to Questions

The Department opposes the closing of modern, usable all-black facilities and we have urged the utilization of all adequate facilities when they are needed to accomplish effective desegregation.

Depending always upon the circumstances, the closing of a modern and well-equipped Negro school may clearly amount to discrimination and in such cases the Department has objected to the procedure.

At the same time, school authorities have always been allowed maximum flexibility in choosing the available measures to achieve total desegregation, as long as such measures prove effective, do not result in other discriminatory effects, and do not serve the deny equal educational opportunity. Court-ordered and Title VI desegregation plans have involved the closing of school facilities to utilize or consolidate dual school systems, and in implementing such plans, districts will be eligible for the proposed emergency assistance.

In a similar vein, school districts have frequently chosen to utilize portables as a means of unitizing the system where the capacity of particular schools and their location makes this an efficient method of facilitating an effective plan for desegregation. *The use of portables is not an "abuse"* as such and has been used as an aid to desegregation. Districts using portables as part of an acceptable desegregation plan next fall will be eligible to receive assistance.

Abuse No. 5.—The authorization of deductions under State income tax laws to reimburse, indirectly, parents for tuition paid to all white private academies established for families who refuse to attend integrated schools.

Answers to Questions

While the constitutionality of such State laws is highly suspect to say the least, the existence *per se* of such laws would not render the school district ineligible for assistance under the proposed Act. If a school district happens to be located in a state with such a law, and there is no private school within the district or serving students of the district which could benefit from tax deductible contributions and whose existence would frustrate the implementation of a desegregation plan in the public schools, its responsibility under Federal law. However, if the reverse is true, and a private school is benefiting from the state law and thereby frustrating the public school desegregation process, there would be a basis for not funding this district.

Abuses Nos. 7 and 8

7. The lowering of the millage rates or State or local public financial aids to public schools as private school enrollment increases.

8. The use of Federal money to supplant reduced local support for public schools which have desegregated.

Answer to Questions

Under Section 5(a) of the Bill financial assistance is provided only to meet additional costs to the district of activities eligible for funding. It is intended by this requirement that the Federal government not pick up costs previously borne by local educational agencies.

It is also intended that regulations relating to this program include a maintenance of effort requirement. This provision would reinforce the requirement of funding additional costs only and prohibit supplanting. With respect to the $75 million program the governing appropriation provides that funds may not be used to supplant funding from non-Federal sources which has been reduced as the result of desegregation or the availability of funds under the program.

At the same time, it may occur that a decrease in public school enrollment, due to new private schools, might have the effect of lowering the total amount of State aid provided through average daily attendance figures. If the State aid has conventionally been based on district enrollment, and if such aid were reduced to a district due to an enrollment decrease, this would not constitute a reduction in the level of educational resources made available by the State for the purpose of establishing eligibility for desegregation assistance.

The extent of financial need is also a factor in the administration of this program. It is a stated priority in the legislation. To the extent that reducing millage may reflect a lack of need for Federal funds, a district reducing millage would likely not be funded. However, it is not intended that predominantly black schools be penalized in the form of not being eligible for Federal assistance where State aid is reduced in proportion to decreased public school population.

Abuse No. 9.—The operation of schools in a district under an old freedom of choice plan which has not been updated or revised under court order.

Answers to Questions

1 and 2. If a court ordered plan for freedom of choice is not accomplishing desegregation, under the $75 million program as presently envisaged, the district would not be eligible for assistance. While a district submitting such a court-ordered plan would be in compliance with Title VI pursuant to 45 CFR 80.4(c)(1), it would still have to meet the other requirement for receiving assistance which will be included in the program—that by the opening of the 1970–71 school year it has commenced the *terminal phase* of its desegregation plan. A district operating pursuant to a freedom of choice plan which is not accomplishing effective desegregation has not commenced the terminal phase of the plan.

Under the Emergency School Aid Act the funding of freedom of choice plans which have not been updated would be a low priority item.

3. If a district operated under an ineffective freedom of choice plan during the 1969–70 school year, but has submitted an effective plan that meets the legal requirements for implementation next fall, the district will be eligible for assistance.

4. The Department receives annual reports from school districts detailing enrollment data and court orders are obtainable through the Justice Department. Prior to approving any grant action, the Department will determine the district's compliance status.

COMMUNITY PARTICIPATION IN PROJECT APPLICATION, DESIGN AND MONITORING

Question 3.—(*a*) Many courts have appointed bi-racial committees to oversee school desegregation plans. What provision will be made for the participation of community residents, particularly bi-racial committees, in the planning or projects, in the application process for funds, in the carrying out of projects, and in the monitoring of their results?

(*b*) If such provisions are to be made for the participation of community residents, will they participate to the same extent in projects funded with the $150 million Summer Emergency Fund?

(*c*) Would you object to having a requirement for such community participation written into the bill?

PUBLICATION OF APPLICATIONS

1. Would you have any objection to a requirement written into the bill that applications for funds be publicized by the local education agency and that procedures be required to permit community residents to appeal applications to which they object or appeal the failure to spend funds as approved or required under your regulations?

Answer.—It is anticipated that bi-racial committees, both those which are court appointed and those which are established by community action, will have a major role in the development of project applications, in advising in the implementation of projects, and in the evaluation of their results, both with respect to the $75 million dollar emergency appropriation and the operation of the Emergency School Aid Act. We are presently studying other methods for bringing to bear meaningful community participation, including parent and student advisory groups. It should be borne in mind, in this connection, moreover, that the Emergency School Aid Act provides for grants to any public or nonprofit private agency, institution, or organization and contracts with any public or private agency, institution, or organization, to carry out programs or projects designed to support the development or implementation of a plan of desegregation. This provision contemplates the funding of private, community organizations which will be helpful in carrying out projects related to desegregation.

We feel these matters can be adequately handled by regulation. However, we would be happy to provide the assistance of our staff if the committee feels that amendments with respect to community participation and public information are necessary.

REPORTING TO CONGRESS AND HEW

Question 4.—Would you have any objection to our requiring that local school districts report periodically to HEW and to the Congress on the operation of projects and on progress made in furthering effective integration?

Answer.—Yes. HEW has designed a monitoring and evaluation system intended to provide comprehensive and timely information on the progress school districts are making in desegregation. Vital to the functioning of an effective monitoring system is that there be one focus of reporting from the field—this will be the Office for Civil Rights. Adding any other reporting requirements is likely to result in confusion for all and dilute the intended effect.

MONITORING AND EVALUATION

Question 5(a).—What procedures will you establish for the effective monitoring and evaluation of projects funded under the Emergency School Aid Act?

Answer 5(a).—A brief summary description of the tentative HEW monitoring and evaluation system for this program follows. Monitoring will be concerned with the assurance that the civil rights intentions of the program are carried out and will report on any evasions or abuses. Evaluation will examine three dimensions of program results and effects.

Monitoring

The focus of all monitoring information will be the Office for Civil Rights (OCR) within the Office of the Secretary, HEW. This office will bring together the information listed on the next page so that an informed comprehensive evaluation of each district receiving funds can be made on a continuing basis.

We intend that OCR monitoring provide the basis for program decision by the Office of Equal Educational Opportunity (EEO) within the Office of Education which will administer this program. Our monitoring plan specifies the step by step relationship between the monitoring and program administration in the following manner.

OCR compliance monitoring step

1. Preliminary ranking of the 1220 districts based on their previous record with OCR and Title IV.

EEO program decision.—This ranking should then be included in the weighing system EEO has constructed to determine the priority ranking of districts for funding.

2. Review of assurances provided by the districts in their applications.

Before awarding a grant to a district OCR should clear any questionable ones.

3. Review of the composition of the Advisory Committees to be established in each project district in the case of complaint by citizens. Recommendation to the Commissioner, OE whether to accept the Committee or demand modification before funding is continued. This review would focus on the representative organizations designated by the LEA to appoint a representative to this committee.

In the case of a negative decision by the Commissioner, OE the district becomes ineligible, until it puts together a representative advisory committee.

4. Continuing review of information on compliance of project districts. The information would be received from several sources:

Desegregation monitoring form.
Reports of district Advisory Committees.
Justice Department reports.
Complaints of citizens and voluntary groups.

Implementation of the program.

Recommendation for termination of funds would be made where necessary.

Termination of funds until OCR certifies that compliance begins.

Evaluation

In rough outline form we see three different levels and kinds of evaluation for this program.

(1) Local evaluation. Each school district will contract with an outside agency for the evaluation of its program. The districts will pay for this evaluation out of money set aside for this purpose in their grants.

(2) Program-audit evaluation—by EEO and OCR teams. This will be an effort to determine how well each district has been carrying out its program and whether good educational practice has been followed.

(3) Analytical evaluation under the aegis of OE/OPPE to examine the effects of desegregation over time with respect to three main variables:

(*a*) cognitive achievement of pupils
(*b*) social relations among pupils
(*c*) effects on the communities

The parameters of this evaluation would include:

The cost of all programs.

The actual mix of program content, i.e., curriculum, teacher aides, teacher training, transportation, etc.

The social-demographic setting, i.e., proportions of majority/minority size of the community, etc.

The analytical methods would combine a detailed survey of a sample of participating districts and more qualitative case-study analysis.

We expect to move immediately toward the detailed planning of this evaluation in order to secure a data base beginning this fall.

(*b*) Would you have any objection to a requirement that independent private agencies monitor and evaluate and report the results of such evaluation to the Congress as well as to HEW?

Answer 5(b).—Yes we would object. As the above outline indicates the school districts participating in this program will be required to furnish a large quantity of data to several different HEW sources. Our design covers all the critical policy issues and any addition or duplication of monitoring and evaluation effort will unduly burden the school districts, may diminish the quality of information provided and will dilute our common purposes.

(c) Would you have any objection if it were required by the legislation that this evaluation include the participation of parents and students of both races resident in the local school district?

Answer 5(c).—Our program guidelines for the $75 million program and the above plan already provide for this participation. First we have expressly ensured that the advisory committee will consist of at least 50% parents and 50% minority members. It will file a monitoring report quarterly to the Office for Civil Rights on how well the program is going.

ETHNIC MINORITIES: MEXICAN AMERICANS AND INDIANS

Question 6.—(a) What proportion of the $1.5 billion will be directed to the needs of children from minorities such as Mexican Americans who have special language problems?

An exact reply is impossible because this is a voluntary project grant program. We hope to include Mexican Americans with special language problems in a proportion roughly equal to their representation in the eligible minority student population. This is, of course, contingent on project application and funding requirements under the law.

(b) What proportion of the $1.5 billion will be directed toward the educational needs of Indian children.

Answer 6(b).—See answer 6(a).

Question 7.

THE ALLOCATION AND EXPENDITURE OF FUNDS

The Allocation of Funds to the States: North and South: Double Counting in Voluntarily Desegregating Districts.

(a) The funds will be allocated among the States according to a formula based upon the number of minority children attending school in each State. Am I correct that this purpose children in school districts under Federal Court orders to desegregate or in school districts which have plans approved under Title VI of the Civil Rights Act of 1964 are counted twice for the purpose of determining State funding allocations?

(b) Is it also correct that children attending school in school districts which voluntarily have integrated their schools under no federal compulsion and without Federal assistance are counted only once?

(c) Therefore, if you voluntarily integrate you get penalized by being counted once, but if you are forced to integrate by a Federal court under Federal law, you are rewarded by being counted twice?

(d) How, then, do you justify this double counting? Will double counting be used next year?

(e) Is it correct that school districts integrating under State rather than Federal law are counted only once? Then, Los Angeles, which is under State court order gets counted once, while Charlotte, North Carolina, under Federal court order will have its children counted twice. Is that correct?

(f) Why don't school districts desegregating under State court orders qualify for double counting?

(g) Several border States, Kentucky and Missouri, for example, desegregated most of their schools more than two years ago. Is it correct that to qualify for the double counting or to be assisted under Category 1 assistance to desegregating school systems you have to be carrying out a desegregation plan less than two years old?

(h) How many school districts in the 17 Southern and border States, such as those in Kentucky or Missouri are ineligible for double counting or Category 1 assistance because they desegregated over two years ago?

Answer 7.—The proposed Emergency School Aid Act of 1970 provides for a formula for allotment of two-thirds of the sums appropriated under the Act. Minority group children in school districts carrying out a plan of desegregation pursuant to a Federal court order or a voluntary plan approved under Title VI of the Civil Rights Act by the Secretary of Health, Education, and Welfare would be counted twice for purposes of determining each State's allotment, if the order was issued or Title VI approval was given within the two fiscal years preceding the fiscal year of allotment. For these purposes, minority group children attending school in school districts which have "voluntarily" integrated their schools (without submitting a voluntary plan under Title VI of the Civil Rights Act) would be counted only once. This double count arrangement is designed to focus assistance on those States in which an emergency exists in the sense that high proportions of minority group children are in school districts under a legal obligation, pursuant to Federal constitutional or statutory law, to terminate dual school systems and establish unitary systems by the opening of the 1970–71 school year. These districts have the most fundamental changes to make in the composition of their school systems and are in greatest need of assistance in the immediate future.

The double count provisions do not "penalize" school districts. In the first place, no local educational agency has an entitlement under the Emergency School Aid Act. The double count provisions simply operate as a means for allocating a portion of the funds among *States*. Local educational agencies which have "voluntarily integrated" their schools and are facing problems as a result are eligible for assistance under section 5(a)(2). The proposed Act assigns no special priority as between categories reflected in paragraphs (1), (2), and (3) of subsection (a) of section 5. Thus, the formula in section 4 does not govern the amount of assistance and individual school district is eligible to receive. Moreover, a school district that was in the process of voluntarily integrating its schools and chose to subject itself, in that connection, to the requirements of Title VI of the Civil Rights Act, could submit its plan as a voluntary plan under that title and, if approved by the Secretary, such voluntary plan could form the basis for a "double count" of its children.

"Double counting" minority group children in school districts classified under section 5(a)(2) (those carrying out a plan to eliminate, reduce, or prevent racial isolation in one or more racially isolated schools in the school district of the agency) would permit a school district to qualify for the "double count" even if only one of a number (perhaps a large number) of racially isolated schools was the subject of an integration plan.

To receive assistance under 5(a)(1), a district must in effect be implementing a plan for the desegregation of its entire school system. Under section 5(a)(2), on the other hand, to receive assistance in carrying out a "voluntary integration" plan, a district need not cover in that plan all racially isolated schools in its system but may proceed on a school by school basis and at its own pace. This was designed to encourage districts with profound problems of racial isolation which could only move a step at a time. It is inconsistent, however, to treat such districts as equivalent to districts carrying out a court order or mandatory plan at least for purposes of a formula for distribution. To be sure, inequities may result in those cases where, under a voluntary integration plan (not filed under Title VI), a school district is exerting the same type of effort required of a district under a court ordered desegregated plan. In these cases, however, it is open to the Secretary to use his one-third discretionary funds to aid such districts directly if the amount available to them is insufficient because the amount allotted to the State is too limited.

Minority group children in a school district implementing a plan of desegregation under an order of a *State* court, which plan had not been filed and approved under Title VI, would not be subject to the double count. Such districts would, of course, be eligible for assistance under section 5(a)(2). The Federal-State count distinction grows out of regulations under Title VI of the Civil Rights Act. (See 45 C.F.R. Sec. 80.4). Under those regulations, the submission of a *Federal* court order for desegregation is accepted as meeting the requirement of an assurance of compliance under Title VI requiring the approval of the Office of Civil Rights. The submission of a State court order is not so regarded. Normally, a school district subject to such an order would have to submit it as a voluntary plan under Title VI. The distinction, at least in part, grows out of the notion that, in view of the doctrine of separation of powers of coordinate branches of Government, the executive department may not look behind decisions of the Federal judiciary. The same restraints do not apply with respect to State court decisions. In any event, consistent with Title VI, a school district under a State court order to desegregate could submit that order as a voluntary plan under Title VI; its minority group children would then be double counted.

THE REALLOCATION OF FUNDS AMONG THE STATES

Question 8.—(*a*) Why do you need the reallocation authority included in Section 4(b)?

(*b*) Is it not correct that under the reallocation authority in Section 4(a) and under other provisions the Secretary of HEW could place top priority on Category 1, de jure desegregation programs, find that most Northern and Western States have "no need" for these programs, and reallocate most of that money to the 17 Southern and border States?

(*c*) In addition, all of the ⅓ of the funds not subject to the State allocation formula could go to the South under Category 1 programs. Is that correct?

(*d*) In other words, does not this act give the Secretary discretion to set priorities and reallocate funds in such a way that your estimates of the amounts of funds to be spent in each State could be entirely misleading?

(*e*) Is the following mathematical analysis of the bill correct: Start with a fund of $1.5 billion. $150 million of that $1.5 billion will go to Southern States this summer. ⅔ of the remaining $1.35 billion or $900 million is allocated under the State formula. Your figures show that 62% of that $900 million, or about $550 million will go to 17 Southern and border States. Add to the $550 million, the $150 million summer emergency fund and $450 million which is the ⅓ allocated at the Secretary's discretion and we have a total of $1,150,000,000, which *could* go to the 17 States. That leaves $350 million to the other 33 States.

Finally, under your reallocation provision, is it *possible* that a substantial portion of that $350 million could be re-assigned to the 17 States. Is that correct?

Answer 8.—Section 4(b) of the proposed Emergency School Aid Act contains a "traditional" reallotment provision. It was thought useful on the grounds that in some *States* projects meeting the requirements of the Act might not be submitted to the Secretary in sufficient number to absorb the State's allotment. Accordingly, a reallotment provision was suggested by way of making most economical use of funds.

Under section 8 of the Act, the Secretary is not expressly precluded from assigning a Nation-wide priority to one category of application. However, in view of the language of section 4(b), it is doubtful that he could use this as a basis for reallocating all monies to one section of the country. Section 4(b) speaks of the excess of an allotment to a State over "the amount which the Secretary determines will be required . . . for programs or projects within such State which meet the requirements for approval of applications under this Act . . . ." It was contemplated that as long as there are in a State approvable projects, under any of the three categories, the Secretary would use the State's allotment for funding those projects With respect to section 8, the intent was that priorities be established for funding projects from within a State. Thus, the Secretary could determine that within State A, priority would be given to section 5(a)(1) projects over section 5(a)(2) projects. This was not intended as a subterfuge to transfer all funds to one section of the country. We would be happy to work with staff on technical changes to clarify this point.

Theoretically, the one-third of the appropriations which the Secretary may use at his discretion could be assigned to one type of project. Again, it was not the intent of the Act to have the Secretary use this authority to benefit one region. On the contrary, this authority would be used to support innovative projects, North and South, alike.

For these reasons, it is wrong to suggest that $1.15 billion under this Act could go to the 17 Southern States.

THE ALLOCATION OF FUNDS AMONG THE THREE CATEGORIES OF ASSISTANCE

Question 9.—Section 5 of the Bill provides for financial assistance eligibility in three separate categories. *First*, a school district which is implementing a plan of desegregation or within two years has completed a plan is eligible for assistance to help implement the plan or to carry out special programs or projects designed to enhance the possibilities of successful desegregation. *Second*, a local educational agency may be assisted to meet the costs of voluntary desegregation to eliminate or reduce racial isolation in one or more racially isolated (de facto desegregated) schools. *Third*, a local education agency in a defacto segregated district which contains at least 10,000, or more than 50%, minority children may receive assistance to conduct inter-racial education programs involving the joint participation of minority and non-minority group children attending different schools, or it may receive assistance to carry out promising pilot or demonstration programs to overcome the adverse educational effects of racial isolation upon children where a district can demonstrate that inter-racial programs are not practicable.

(a) How much money under this Act will be spent for each of the three categories: (1) to help dejure segregation, (2) to help voluntary and de facto desegregation and (3) for inter-racial projects or compensatory education projects in de facto districts?

Answer 9(a).—Because this is a voluntary program this question can only be answered in a general way. We cannot predict how many district will apply for assistance under each of the three categories. However, using available information we have been able to estimate approximately how many school districts and minority children will be included under each category of assistance.

Starting with the number of minority children in each category and using rough estimates of per pupil cost based on experiences and analysis we obtain the range of minimum and maximum need. Allocating our funds in proportion to these needs and keeping in mind that our priority task is to accomplish educationally successful desegregation, it might be expected that approximately 40% of the total funds would go to Category I, 40% to Category II and 20% to Category III.

We emphasize that these allocations are approximate because each district faces a unique situation. We know that there are many cases, especially in *de jure* areas, where desegregation results in considerable savings on school costs. We also know that the first year costs of desegregation are always greater than the continuing costs—these in fact often are quite modest.

(*b*) How much money will go to that portion of the third category that permits funding of pilot programs in racial isolation?

Answer 9(b).—We cannot say. As the bill clearly states, funding under this category will be possible only when HEW determines that a district cannot undertake inter-racial programs.

(*c*) In what States will this money be spent?

Answer 9(c).—Two-thirds of the total program funds will be allocated to States on the basis of an allotment formula. The rest will be distributed to areas of greatest need with first priority accorded to desegregation efforts. The table attached provides a state listing of the amount to be received under the formula allotment. (See Attachment 2.)

(*d*) Is it not fair to say then, that if the Congress passes this legislation as proposed we really have no assurance or guaranty what proportion of the funds will be spent for what purposes or in which of the three categories, and that we have no meaningful assurance of how much money would be spent in any one state?

Answer 9(d).—It is difficult to predict how funds will be allocated whenever a federal program is voluntary, as this one is. However, HEW has an explicit set of policy priorities, and our program allocations match these and relate directly to the best available estimates of the objective needs facing the schools.

ELIGIBILITY FOR ASSISTANCE TO RACIALLY ISOLATED SCHOOL DISTRICTS UNDER CATEGORY 3

Question 10.—Category 3 provides for assistance for de facto segregated school districts with children in racially isolated schools. The assistance is of two kinds—inter-racial projects short of school integration and pilot compensatory projects for racially isolated children. I am troubled by the eligibility criteria for Category 3 districts. Section 5(a)(3) defines a Category 3 district as eligible for such assistance when it is a district with 10,000 or more minority children or more than 50% minority children.

(*a*) Are we to assume that districts with 10,000 children from minorities or 50% minority children are districts in which integrated education is impossible or impractical?

Answer 10(a).—Not at all. There were two reasons for choosing these limits for eligibility, none of which imply a judgment that integration is impossible. First, we realized that fixing the desegregation priority would leave relatively little money for this category. The experience of Title I has demonstrated that some sensible degree of resource concentration is needed to accomplish any significant educational results and these criteria were a way of limiting the universe of eligible districts to focus the resources. Secondly, it is clear that the larger districts with the most minority students have the most complex and severe problems of quality education. For that reason we felt these should be the places where the limited Category III funds are spent in a concentrated way.

(*b*) Doesn't this say to every district with 50% minority children or more than 10,000 minority children: "*You don't have to integrate your schools.*" Does it not tell them they can obtain assistance without agreeing to reduce or prevent racial isolation?

Answer 10(b).—Quite the contrary. In section 5(a)(3) the bill provides that only when inter-racial educational programs are not feasible in the judgment of HEW will a district be eligible for pilot or demonstration compensatory projects. The inter-racial educational programs to be funded will be designed to substantially reduce racial isolation even though they may not involve full scale integration.

(*c*) Does the 10,000—50% formula apply regardless of the district's over-all racial composition or its geographic relationship to other districts? Yet, they can get by with racially isolated programs, is that not correct?

Answer 10(c).—The 50% figure does refer to the overall racial composition of the district. The geographic relationship with other districts is a major factor in determining whether any kinds of desegregation is feasible; this means we would expect this be considered before any funds were available for situations of racial isolation.

(*d*) What safeguards are there in this bill that would prevent a city which did not qualify under this criteria but which wanted funds for compensatory education programs in racial isolation from redrawing its district lines to establish a district with more than 50% minority students?

Answer 10(d).—Redrawing of school boundaries so as to concentrate racial minorities would be a clear violation of Title VI.

ALLOCATION OF FUNDS AMONG PROJECTS

Question 11.—Eligibility Category No. 2 provides for financial aid to districts which voluntarily desegregate or wish to prevent the emergence of racial isolation.

(*a*) Section 5 of the statute, in referring to Category 2, specifically authorizes payment of additional costs of implementing a plan for reducing racial isolation, but does not specifically authorize "special programs" to enhance the possibility of success. Yet, Category 1, providing assistance to districts under court ordered desegregation plans, or Title VI plans, does specifically authorize "special programs" beyond the cost involved in simply mixing kids. Does this mean that in Category 2, the Department would give no assistance beyond the cost of mixing children? Or is this a drafting error?

Answer 11(a).—It is our intention to provide assistance for the same range and types of program activities to desegregating school districts whether this occurs in *de jure* or *de facto* context. The difference mentioned is a drafting oversight.

(*b*) What percentage of the funds under Category 2 will be spent on costs incident to integration such as transportation? How much will be spent on personnel and educational programs?

Answer 11(b).—It is impossible to provide any estimates of proportionate funding allocations by type of program expense because HEW will insist on a comprehensive educationally sound project and this is likely to vary from district to district.

(*c*) Will these be new personnel with relevant training? If so, where will they come from?

Answer 11(c).—Extensive experience indicates that inservice training and retraining of existing school staffs has resulted in innovative and constructive response to the new desegregated situations. In addition the hiring of teacher aides and paraprofessionals from the communities has often worked well and we would expect this to occur frequently.

(*d*) Do you have any hard information or staff analyses on which to base your estimate?

Answer 11(d).—See answer 11(b).

(*e*) Would you produce for the record back-up information concerning the proper size of an average grant allocation between personnel and other educational costs, information on the availability of educational personnel and describe the kinds of programs showing promise of success.

Answer 11(e).—There is no such thing as the "proper size of an average grant". We do hope, however, that evaluation will lead to some empirical data about how resources should be invested to attain the best educational and social results.

Question 12.—Category 3 aids districts to carry out inter-racial programs for children attending different schools and to carry out programs for childen in racial isolation.

(*a*) How much will be spent on inter-racial programs?
(*b*) How much will be spent on programs conducted in racial isolation?

Answer 12.—There is no specific allocation of funds among the three categories of assistance. There is an allocation of funds on a geographical basis (each State getting a proportionate share) which applies to two thirds of the program funds but there is no allocation by purpose (among the three categories of assistance). Even within States the Secretary may within his discretion choose to fund whichever projects are most consistent with his priorities although some States have a greater demand for certain categories of assistance than others. The priorities of the program include the extent to which racial isolation is reduced, the need for assistance with special reference to educational deficiencies and the promise of the project.

With respect to programs for those students who need special programs but who are in areas with such a large and isolated minority population that interracial programs are not feasible only *unusually promising demonstration projects* are authorized.

THE $75 MILLION EMERGENCY APPROPRIATION

Question 13.—You are asking Congress for an Emergency Appropriation of $75 million to be spent this summer before the bill is passed. That money will be spent under existing authorizations.

(*a*) Is this program not essentially the same as what you are asking for under Category 1 of the proposed bill?

Answer 13(a).—Yes. However, the emergency appropriations of $75 million to be spent under existing authorizations includes programs in HEW and OEO. The restrictive language of these authorizations does not have the flexibility of the pending bill.

(*b*) Will all of this money go to Southern states? Will it all go to districts under court order or Title VI plans:

Answer 13(b).—Eligible school districts are those under court order or Title VI plans. There are approximately 1229 eligible districts. Approximately 1200 of these districts are located in the seventeen southern and border States. School districts located outside the south are under state court orders at this time.

(*c*) How many districts are eligible for this money?

Answer 13(c).—There are approximately 1229 eligible districts.

(*d*) Will they all be funded?

Answer 13(d).—It is unlikely that $75 million will be sufficient to adequately fund all 1229 districts.

(*e*) If some will be funded and others will not; what criteria will be issued to decide among competing applications?

Answer 13(e).—In determining whether to provide assistance under the program, or in fixing the amount thereof, the Commissioner will consider *such criteria as* he deems pertinent, including—

(1) the applicant's *relative need for assistance;*

(2) the relative promise of the project or projects to be assisted in carrying out the purpose of the program;

(3) the extent to which the proposed project deals comprehensively and effectively with problems faced by the local educational agency in achieving and maintaining a desegregated school system;

(4) the amount available for assistance under the program in relation to the applications pending before him.

(*f*) How many students will be attending school in those districts eligible for funding under the $75 million summer program?

Answer 13(f).—There are approximately 9.4 million students enrolled in the eligible districts.

(*g*) What will be the size of the average per-pupil grant?

Answer 13(g).—It is not possible to estimate a per-pupil grant because of the varied projects that each district will design to meet its own particular needs. Grants will not be made by dividing the universe of students by funds available. Grants will be made according to the criteria listed in item 3(c) above.

Question 14.—What specific kinds of projects will be funded with the $75 million?

Answer 14.—Projects assisted under the program shall be designed to contribute substantially to achieving and maintaining desegregated school systems and may include activities under the following broad areas:

Special teacher preparation programs designed to assist educational personnel in problems incident to desegregation; special curriculum revision programs required to meet the needs of a desegregated student body; special pupil personnel services designed to assist in achieving quality education during the desegregation process; special community programs designed to assist school systems implement desegregation plans; special student to student programs to assist students in opening up channels of communication concerning problems incident to desegregation; special comprehensive planning and logistic support designed to implement the desegregation plan; and other special projects designed to meet the purposes of the program.

Question 15.—What evidence is there that each of these projects will work to assist integration?

Answer 15.—The above activities were identified as most important by the U.S. Office of Education and a panel of outside consultants representing a broad spectrum of University educational staffs and school superintendents who have implemented and are implementing desegregation plans.

Question 16.—Please produce for the record the reports you have showing how such projects and programs in fact in the past have assisted integration?

Answer 16.—See Attachment No. 3.

Question 17.—In the absence of detailed findings as to what projects in fact help provide stable integrated education how do you propose to decide which application to reject and which to accept?

Project proposals will be a joint effort between the school district, the university desegregation centers, the state departments of education, and program officers in Title IV of the Bureau of Elementary and Secondary Education. Projects will be evaluated according to the criteria listed under Item 3(c).

Question 18.—How can you possibly spend $75 million effectively during the months of July, August and September when you have no specific guidelines, no new personnel to administer the program, and nearly a thousand separate school districts which are eligible to submit application?

Answer 18.—Since the $75 million is appropriated under the 1971 Education Appropriation Act, rather than under the FY 1970 Supplemental, funds can be expended throughout FY 1971. We plan, however, to have substantial impact this fall.

Guidelines for the program will be published as soon as the appropriation bill becomes law. A series of conferences will be held in Southern states for school district staffs, state department personnel, university personnel, and OE program officers. The school districts with these consultants will jointly develop their individual project. Project approval will quickly follow this effort. Approval will be based on criteria listed under item 3(c).

Question 19.—(*a*) Your original proposal for the $150 million emergency fund to be spent this summer blocks out $115 million for personnel and special programs. What percentage of that $115 million and what percentage of Category 1 funds will be spent on school district personel? What proportion on special programs?

Answer 19(*a*).—No estimate is possible at this time.

(*b*) How many of these will be new personnel and how many will be existing personnel under new titles? Where will the new school district personnel come from?

No estimate is possible at this time.

Question 15.—Will you supply this Committee and the Select Committee on Equal Educational Opportunity with the following as they become available:

(*a*) The guidelines and other materials furnished local school districts which apply for funds?

Answer 20(*a*).—Yes.

(*b*) Copies of the first applications for funds as submitted and as approved by HEW?

Answer 20(*b*).—Yes.

Question 21.—Is there or will there be a time deadline before which applications must be submitted for the expenditure of the $75 million? If districts fail to meet this time deadline in submitting applications can the Secretary then reallocate money to which that State would have been entitled to other States that have submitted better applications?

Answer 21.—The intent is to fund as many as possible before the fall school term begins. The first priority of this program is to spend this money effectively so that legitimate needs incident to successful desegregation are adequately met.

We will expend funds only in response to applications which set forth quality projects and real needs related to desegregation.

Question 22.—(*a*) Will the initial $75 million be reprogrammed from other existing domestic programs?

Answer 22(*a*).—The initial funding was including as part of an overall review of budget expenditures for both 1970 and 1971. The Budget Director announced on May 19, 1970, a series of changes which affected budget receipts and outlays. Estimates for budget outlays reflected a net increase of $4.8 billion from the February estimates. About $2.3 billion of the increase is in uncontrollable programs, including interest on the public debt, unemployment benefits, public assistance, and farm price supports. About $2.5 billion of the increase is associated with a number of actions that have been taken since the budget was transmitted. Included in the latter estimate was our proposed $150 million for school desegregation. While other existing domestic programs show a reduction, it is not possible *to identify any specific reduction with a specific increase.*

(*b*) If so, which domestic programs will be cut back and how much will be cut from each?

Answer 22(*b*).—Not applicable.

(*c*) Is the originally budgeted amount for any of the following programs being either cut back or deferred until fiscal year 1971 and, if so, in what amounts—Community action; Head Start; Legal Services; Food Stamps; Model Cities.

Answer 22(*c*).—Of the programs listed, the only one reflecting a reduction is Model Cities where a reduction of $150 million is estimated in 1971 budget outlays. This reduction is not related to the $150 million requested for desegregation assistance, but is based upon a current estimate of funding requirements for the model cities and reflects slippage on the part of the localities in developing project applications and operational plans. There is no reduction in budgeted program level but merely a reduction in the rate of expenditure.

(*d*) Where will the funds authorized by the pending legislation come from? If the Congress passes the pending legislation, will it be asked to appropriate $350 million this year? Will these be reprogrammed funds or will they be a new budget request?

Answer 22(*d*).—The funds associated with the new legislation will be made part of the overall budget requirements for 1971 and 1972. The President indicated in his letter of May 25 to the Congress that $150 million supplemental is needed for the fall of 1970 to help desegregating school districts. The President also indicated that another $350 million will be requested for fiscal year 1971 upon enactment of the proposed Emergency School Aid Act of 1970. This represents a new budget request to be submitted when the legislation is passed. In the light of recent action on the Education Appropriations bill reducing our request to $75 million, the Administration is now committed to asking for an additional $425 million for funding the Emergency School Aid Act.

Question 23.—Category 1 provides for the funding of "special programs."

(*a*) What sorts of educational programs exist which show promise of successfully integrating a school system?

Answer 23(*a*).—Educational programs do not "successfully integrate a school," only people can do that. Sound educational programs provide the basis for achieving the learning gains that can be the result of desegregation.

(*b*) Describe briefly the research or other information on which you base these findings. Please produce staff papers and any other available documentation for the record.

Answer 23(*b*).—A wide variety of sources contributed to our sense of the education programs that are relevant. This includes the experience of the Division of Equal Educational Opportunity within the Office of Education, the Coleman report and research monographs such as Meyer Weinberg's *Desegregation Research: An Appraisal* (*1968*). There have also been field consultations with school districts that have conducted educationally sound desegregation.

(*c*) Will school construction be permitted under Category 1? Where in the bill is it specifically prohibited?

Answer 23(*c*).—Only repair or minor remodeling or alteration of existing facilities is authorized. See section 6(f). Major school construction is not authorized and therefore cannot be funded.

Question 24.—What sorts of assistance beyond the cost of moving children and minor renovation can be provided under this section which cannot be provided under existing statutory authority?

Answer 24.—While it may be true that assistance beyond the cost of moving children and minor renovations could be provided under existing authority, nowhere does sufficiently flexible authority exist to implement a broad range of activities in a coordinated and comprehensive desegregation plan which is educationally sound. In addition, attempting to coordinate the wide range of activities under existing authority which are necessary to serve this purpose would be difficult administratively.

Question 25.—Category 3 (Section 5(a)(3)) provides the funding of inter-racial projects for children in different schools. It also provides that if in a school district of 10,000 minority students or 50% minority students "provisions for such (inter-racial) programs cannot be practicably made" then it is eligible for funds for "unusually promising pilot or demonstration programs" in racial isolation.

(*a*) How will it be determined that inter-racial programs are impractical?

(*b*) Who will make this determination? On page 7 of your statement you indicate that this decision will be left to the individual school district ("when a district establishes that such a situation exists then it could receive aid for demonstration compensatory programs. . . ."). What safeguards do you propose to assure that school districts don't abuse this discretion?

Answer 25(a) and (b).—It is essential to point out that the Department, not the individual school district, determines whether interracial experiences are impractical. Such a determination would be made only upon a showing by the District that such factors as distance, age of the students, and the magnitude of the concentration of minority groups make it impossible to implement even a program of limited interracial experience.

(*c*) If inter-racial programs are *practical*, why is the integration of the schools themselves not practical?

Answer 25(c).—It may well be feasible to transport children for one or two classes or activities to central locations in situations where all the same children could not change schools. This would be a function of geography, the types of inter-racial programs and relative school capacities in different neighborhoods.

(*d*) Is there any evidence that inter-racial programs such as those you suggest will raise the achievement levels of minority children? If not, in view of the shortage of funds, should not this category of assistance be eliminated?

Answer 25(d).—There is very slight evidence because there have been so few instances of inter-racial academic programs. But this is all the more reason for keeping this provision in the legislation. There are enormous numbers of minority children in urban situations where the chances for desegregation are limited by sheer social demography. In those instances, inter-racial programs may provide a very useful means for both improving attitudes and achievement. We can't know until this is tried and carefully evaluated.

(*e*) Could you give us an example of a case in which an inter-racial project would not be "practical"?

Answer 25(e).—An example might be a situation where the number of minority students concentrated in one area far exceeds the number of non-minority students in the district or in readily accessible districts. In this situation it might be possible to provide interracial programs for some of the minority students but to provide such programs for all of them would be impractical. Yet, it would be possible under our bill to offer these students promising educational programs.

(*f*) Would you describe to the Committee what constitutes "unusual and pilot or demonstration programs"?

Answer 25(f).—Such a program would be one which showed substantial promise of tangible improvements in educational achievement. Such programs must involve an additional expenditure per pupil to be served of sufficient magnitude to provide reasonable assurance that the desired impact will be achieved.

(*g*) Is there any real justification for this category beyond the fact that it was prominently mentioned in the President's message?

Answer 25(g).—Yes, only through this device can we provide assistance to disadvantaged minority students who are in districts which might not be able to fully desegregate in the immediate future. This would ease the problems related to racial isolation for those children for whom it is immediately impossible to provide a fully desegregated education.

PROJECTS AUTHORIZED—DUPLICATION WITH OTHER PROGRAM AUTHORITY

Question 26.—In what respect would the "promising pilot or demonstration programs" under Category 3 of Section 5 differ from programs currently being funded under the Elementary and Secondary Education Act, Title I or III or under other existing educational programs?

Answer 26.—Titles I and III of ESEA are not designed to assist school districts in desegregation or to help mitigate the effects of racial isolation. Title I is addressed to the more general problem of educational disadvantage resulting from poverty and Title III is addressed to the broader problem of innovation in all phases of education. In addition, Title I is funded according to a scheme which makes it impossible to concentrate Federal dollars where they are needed most for the purposes of desegregation. The same problem applies to Title III with the additional reservation that that program is now being administered almost entirely through the States.

Projects under category 3, then, would differ from those which could be funded under existing law in at least three respects: They would (1) have a higher concentration of funds on a per pupil basis, (2) be more specifically addressed to the educational problems of desegregations, and (3) be administered directly from the Federal level.

Question 27.—In the President's Education Message earlier this year, he questioned the effectiveness of remedial and compensatory education programs, such as ESEA, Title I and Head Start. In view of this criticism, why are remedial services listed as one of the programs fundable under this Act and under the $150 million Emergency Appropriation request? Will these remedial services be different from those provided under ESEA, Title I and other existing programs? If so, how?

Answer 27.—The effectiveness of compensatory education programs is mixed. Some programs, however, have been demonstrated to be effective, particularly if resources can be concentrated at a sufficiently high level. This program, unlike Titles I and III, permits the concentration of resources. It also gives HEW discretion over the nature of the projects to be funded. This discretion should make replication of the successful projects more possible.

Question 28.—(*a*) What evaluation of existing programs has been made in order to avoid the mistakes, waste and abuse that has occurred in the use of some of this money?

Answer 28(a).—A task force has been established to study ways of improving the administration of Title I, ESEA. While the final report of this task force has not yet been submitted, some of its preliminary findings have been utilized. Representatives of the Office for Civil Rights, the Division of Equal Educational Opportunity. Assistant Secretary for Planning and Evaluation and Title I have also been consulted. Throughout the development of the program existing studies of compensatory education have also been utilized.

(*b*) What is working and what is not?

Answer 28(b).—While information is becoming available in increasing quantities, a definite answer to this question is difficult to give. There is some evidence, however, that desegregation of schools has a positive effect on achievement and that some compensatory education programs also produce positive results.

(*c*) What thoughtful consideration has gone into preventing the use of this money to duplicate other programs and how will it specifically relate to increasing and maintaining desegregation?

Answer 28(c).—See answer 26.

(*d*) Has anyone looked at the other programs and Titles to see if they are effective?

Answer 28(d).—See answer 28(a).

(*e*) Teacher training is supposed to be the main thrust of the Education Professions Development Act. What kind of training have they been conducting and where? How effective has it been?

Answer 28(e).—Principal responsibility for the training and retraining of teachers for constructive roles in the desegregatiton process rests not with the Bureau of Education Personnel Development but with the Division of Equal Educational Opportunity in the Office of Education. This division has supervised the training of more than 20,000 teachers each year for the last four years and has established a network of university centers equipped to provide massive teacher training programs based on sound experience.

(*f*) How will the teacher training, if permitted under the Emergency School Aid Act, be different?

Answer 28(f).—We expect a greatly expanded program of teacher training. We would hope to use some of the more intensive and expensive techniques leading to attitudinal change and skill improvement. Past limits on the EEO budget have meant that the teacher training activity has usually not accomplished all it might have. Of special interest would be more training in how to use and develop new curricular materials and course formats that work well in the setting with multiple skill groups in one classroom. In addition, we would expect to add a training program for the para-professionals who would be working with the teachers.

Question 29.—Why is administration of this program vested in the Secretary rather than the Commissioner of Education? Does this reflect the Commissioner's standing with the White House?

Answer 29.—The program will be administered by the Office of Education by delegation from the Secretary. The authority vested in the Secretary provides additional flexibility to utilize other programs within HEW that are not under the Commissioner.

Question 30.—Who will administer this program?

Answer 30.—The program will be operated within the Office of Education directly under the Commissioner of Education.

Question 31.—(*a*) What guidelines have been prepared for this program? Who is preparing them?

Answer 31(a).—The Office of Education, HEW planning and evaluation staff, Office of General Counsel and of the Budget are jointly preparing regulations dealing with the $75 million program which will be published in the Federal Register when completed.

Meetings have been held with civil rights groups, educational groups, and outside consultants to assist in the preparation of these regulations.

(*b*) When will they be completed and forwarded to this Committee?

Answer 31(b).—Regulations for the $75 million program will be forwarded immediately upon enactment of the education apropriations bill.

Regulations for the program under the Emergency School Aid Act of 1970 will be published in the Federal Register upon enactment of the bill.

(*c*) Will the Agnew Committee have any role in preparing these guidelines or review applications?

Answer 31(c).—The regulations are being prepared by HEW. Informational copies are forwarded to the Agnew Committee.

(*d*) What will the role of the Agnew Committee be if it will not be involved in the implementation of this program?

Answer 31(d).—Generally the Committee is organizing and working with statewide committees to assist school districts with community problems involving the desegregation process.

The President's March 24th statement on Elementary and Secondary Desegregation includes the following statement:

"We shall launch a concerted, sustained and honest effort to assemble and evaluate the lessons of experience: to determine what methods of school desegregation have worked, in what situations, and why—and also what has not worked. The Cabinet-level working group I recently appointed will have as one of its principal functions amassing just this sort of information and helping make it available to communities in need of assistance."

(*e*) Will the Agnew Committee set overall policy?

Answer 31(e).—Basic policies for the administration of the program will be prepared by the Office of Education subject to the approval of the Commissioner of Education and the Secretary of HEW.

(*f*) Will the Agnew Committee secure funds for individual school districts?

Answer 31(f).—No. Decisions regarding grants to local districts will be made by program offices in the Office of Education.

Question 32.—I understand that you intend to hire 100 new employees to administer this program. Where will they come from? Where will all of these people have obtained relevant experience and expertise?

Answer 32.—The Office of Education has available within the Division of Equal Educational Opportunities, Title IV, Regional Office staffs in Charlottesville, Atlanta, Dallas, San Francisco, and Chicago in addition to the Washington staff. All staff members are educators with desegregation experience. In addition 15 universities have desegregation centers staffed with experienced educators in matters dealing with desegregation. Also, 25 state departments have Title IV staff skilled in this area. These existing Title IV resources would be utilized in the administration of the $75 million. Other existing OE personnel would be detailed to the effort as required.

Additional personnel would be recruited from school administrators with experience in administering desegregated schools.

MAINTENANCE OF EFFORT: COMPARABILITY

Question 33.—Section 7(a)(3) requires that in the case of inter-racial or pilot compensatory programs, "the program or project to be assisted will involve an additional expenditure per pupil to be served, determined in accordance with regulations prescribed by the Secretary of sufficient magnitude to provide reasonable assurance that the desired educational impact will be achieved and that funds under this act will not be dispersed in such a way as to undermine their effectiveness." Why doesn't this requirement apply to all categories of programs fundable under this act?

Answer 33.—While the extension of this requirement to the other categories of assistance would cause no serious difficulty, it was included in its present form to assure that the unusually promising demonstration programs authorized under category 3 have a funding level sufficient to distinguish their results from those of other compensatory programs like Title I where funds have generally not been sufficiently concentrated.

ANSWERS TO ADDITIONAL QUESTIONS FROM SENATOR MONDALE

Administration

1. In your testimony before the Education Subcommittee and the Select Committee on Equal Educational Opportunity, you said the reason for placing administrative authority for the bill in the Secretary of HEW, rather than in the Office of Education, was so that Title VI which is administred in the Office of the Secretary and Title IV which is administered in the Office of Education "can work together." I was under the impression that these two programs, despite having separate locations administratively, are now and have for several years been working closely together. Is that correct? If so, why is there a need to place authority in this bill in the Secretary? If not, why isn't HEW proposing changes in existing legislation to permit Title VI and Title IV to work together closely in their current areas on responsibility?

As you suggest the Title IV and VI operations do work closely together presently although Title IV reports to the Commissioner of Education and Title VI directly to the Secretary. However, it was our feeling that cooperation between Title VI and the new desegregation program operation might be somewhat facilitated if the lines of authority for the new desegregation program and Title VI emanated from the same source, the Secretary of HEW. The Secretary would then delegate the authority to operate the new program to the Commissioner.

Language and/or Ethnic Minorities

1. What do you see as the educational needs of Mexican-American and Puerto Rican children as they relate to ethnic isolation? How will those needs be met through the provisions of this bill?

7. What do you see as the special educational problems of American Indian children, particularly the growing number of Indian children living in urban areas and going to public schools in our cities? How will this program meet those needs?

The effects of ethnic isolation, rural and urban, on the educational development of Mexican-American, Puerto Rican and American Indian children are both severe and long term. Ethnic isolation often creates a homogeneity of educational environment in which a perception of cultural diversity, without an assumption of cultural superiority, cannot occur. Moreover, this homogeneity effectively precludes the interaction of children from different socio-economic and ethnic home environments. Every major report or research project dealing with the educational problems and needs of "disadvantaged" children has concluded that educational development (learning) is greatly hindered by a homogenous learning environment. Children learn more from each other than from any other resource of the educational environment. To create and perpetuate homogeneity is to greatly reduce the pool of experience, ideas and values from which children can draw and contribute in interaction with other children. In a heterogeneous educational environment cultural diversity can be presented in an exciting interaction/awareness/growth process which is education in its truest sense. This diversity can be presented and perceived as enriching the total human environment rather than as threatening to a particular cultural insularity.

Another important problem related to ethnic isolation relates to the effect of such isolation on educational motivation and psychological development of the isolated child. While the segregated Anglo child is equally deprived of a heterogeneity of educational environment which could lead to increased educational development, he is rarely confronted with a school environment which directly rejects his language and, less directly, but just as devastatingly, rejects the culture of his home environment: lifestyle, clothes, food, family relationships, physical appearance, etc. The Mexican-American, Puerto Rican and American Indian child is constantly isolated by an educationally sanctioned picture of American society which produces a consciousness of separation and then exclusion and then inferiority. Realizing his exclusion from the dominant Anglo society (as presented by the mass media, advertising, textbooks, etc.), the child perceives a rejection by the social and educational system, first of the language, culture and values of his home; and, then, as the internalization process begins, a rejection by the society of his home which he personalizes as a rejection of his parents, and finally, a rejection of himself. This shattering process of self concept destruction often leads to withdrawal from or hostility toward the educational system. Attitude or posturing toward the learning environment is the single most important factor in the process of educational development.

Finally, the maintenance of ethnic isolation creates for the Spanish-speaking or Indian language-speaking child the additional disadvantage of depriving him of the most important resource for English language skill development—regular interaction and communication with English-speaking children.

In summary, some of the most important needs of Mexican-American, Puerto Rican and American Indian children related to ethnic isolation are:

(1) The need for ethnic or cultural diversity in the educational environment: HETEROGENEITY.

(2) The need for total institutional reposturing (including culturally sensitizing teachers, instructional materials and educational approaches) in order to incorporate, affirmatively recognize and value the cultural environment of ethnic minority children so that the development of positive self-concept can be accelerated: BI-CULTURAL APPROACHES; with as an important corollary;

(3) The need for language programs that introduce and develop English language skills without demeaning or otherwise deprecating the language of a child's home environment and thus without presenting English as a more valued language: BI–LINGUAL COMPONENT.

To meet the needs of ethnically isolated children described in Numbers 2 & 3 above, participation of Anglo children in the Bi-Cultural/Bi-Lingual programs is essential.

Sections 6(a) and (d) of the Bill specifically provide for the use of funds for teacher training (eg. cultural awareness programs), and the development and employment of new instructional techniques and materials. These provisions would constitute the major areas of financial assistance which would be needed by de-isolating school districts to meet the needs of Mexican-American and Puerto Rican children.

2. In court ordered cases such as Corpus Christi, Texas which have resulted from civil suits rather than Justice Department/HEW action, are these school districts eligible for funds under this act?

Section 5(a)(1) of the Bill provides that the Secretary may provide financial assistance to applicants which are currently implementing a plan of desegregation or which have completed the implementation of a plan of desegregation within two years prior to application. Section 9(f) of the Bill defines a plan of desegregation to include (1) plans approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 *or* (2) plans which have been undertaken pursuant to a final order of a court of the United States.

A final desegregation order of a United States court constitutes a plan of desegregation for purposes of funding under the Bill regardless of whether the United States is a party in the action.

3. How much of the money under the act is to be earmarked for the special needs of such groups? Of the six million or so Mexican Americans in the Southwest only a very, very small percentage are involved in court ordered cases. What about those which are not: What kind of priority can they expect?

4. Would you say that the language of the present bill offers such guarantees? (Assuming a positive answer to No. 3.)

No specific earmarking of funds has been made for the special needs of these groups. It is impossible to estimate the amount of funds which will be granted to school districts seeking to implement programs related to the desegregation or de-isolation of Spanish-speaking minority groups. We would hope that the amount of funds allocated to projects serving Spanish-surnamed Americans would reflect their proportion of the total minority population.

While only a small percentage of the Mexican-Americans in the Southwest have been or are presently involved in court ordered desegregation, a much larger percentage of students, particularly in Texas, reside in districts which have submitted voluntary desegregation plans. Moreover, by memorandum dated May 25, 1970, the Department clarified to all school districts with national origin minority group children certain Title VI policy requirements relating to the provision of equal access to educational opportunity. The impact of this memorandum in terms of enforcement and voluntary compliance will not be fully felt until the latter part of the next school year. However, nationwide, a great many school districts with Mexican-American and Puerto Rican students will have to implement plans designed to achieve equal educational opportunity. Consequently, the percentage of eligible districts with substantial numbers of Mexican-American and Puerto Rican children will dramatically increase during the next few years.

5. Will the administering agency be able to offer specific suggestions to Mexican American impacted schools for the use of these funds? For example?

The administering agency will be able to offer specific suggestions to Mexican-American impacted schools for the use of these funds. Among such suggestions will be teacher training (cultural awareness and sensitivity) curricular revision, development of new culturally relevant instructional materials and designs for bi-cultural/bi-lingual programs.

6. In the staffing of the 100 or so positions which have been proposed to administer the program, will the staffing pattern reflect the minority group composition(s) of the different regions? What about the National Advisory Council?

The staffing pattern of the program administration and the National Advisory Council will reflect as closely as possible the minority group compositions of the different regions.

Senator PELL. I would also ask, for the Senators who submit questions, to be sure that the staff of the subcommittee have copies of the questions so that we can be sure they are in the record.

I thank you all for coming up.

The meeting will recess to the call of the Chair.

(Whereupon, at 12:25 p.m., the joint meeting recessed to reconvene subject to the call of the Chair.)

EMERGENCY SCHOOL AID ACT OF 1970

WEDNESDAY, JUNE 24, 1970

U.S. Senate,
Subcommittee on Education
of the Committee on Labor and Public Welfare,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 4221, New Senate Office Building, Senator Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senators Pell (presiding) and Javits.

Committee staff members present: Stephen J. Wexler, counsel; Richard D. Smith, associate counsel; and Roy H. Millenson, minority professional staff member.

Senator Pell. The Subcommittee on Education will resume its hearings on S. 3883, the so-called Emergency School Aid Act of 1970.

Our first witness is Mr. John Lumley, representing Mr. George Fischer, president, National Education Association.

STATEMENT OF JOHN M. LUMLEY, ASSISTANT EXECUTIVE SECRETARY OF THE NATIONAL EDUCATION ASSOCIATION FOR LEGISLATION AND FEDERAL RELATIONS, REPRESENTING GEORGE FISCHER, PRESIDENT, NATIONAL EDUCATION ASSOCIATION; ACCOMPANIED BY STANLEY McFARLAND AND MRS. MARY GEREAU

Senator Pell. I might say that it has been very hard to get witnesses to come forward on this legislation. We would like to move it. But it has been hard to get people to express an opinion on it. I am glad you would come.

Mr. Lumley. I have with me Mrs. Mary Gereau and Mr. Stanley McFarland of our staff.

May I express the apologies of Mr. George Fischer for not being present. Unfortunately, the governing bodies of the National Education Association are meeting in California this week, and the annual convention of the National Education Association will start there on Sunday. For that reason, President Fischer is unable to be present.

The NEA is deeply interested in the cause of integration of the schools in all parts of the country. We have been disturbed at the regression in this area which has so far characterized the Nixon administration.

We hope that the proposed Emergency School Aid Act is evidence of a reversal of the Nixon record in this matter, so clearly described by Peter Gall, formerly with the HEW Civil Rights Office, in a recent article in the Washington Monthly:

> From almost its first month, the Nixon Administration began to nibble away at our program. First, the desegregation guidelines were weakened in a joint HEW-Justice statement drafted primarily at the White House.
>
> Then several school districts got favored treatment that violated all the standards that had been maintained until then.
>
> Then Secretary Finch sent a letter to the Fifth Circuit Court of Appeals, asking for a delay for 30 Mississippi school districts, in what then appeared to be (and was later held to be) direct conflict with rulings of the Supreme Court.
>
> Finally, the Administration adopted the code words "busing" and "neighborhood schools" as the definition of what school desegregation was all about, abandoning the contention of the Supreme Court, Congress, and the previous Administration, that the issue was equal educational opportunity under a very explicit law.

We are concerned about the fact that Dr. James Allen was dismissed from the administration recently. He was one voice in HEW that was speaking up strongly for the integration of schools.

We are heartened by the fact that the administration is now proposing legislation to advance desegregation and hope the action will match the rhetoric this time.

While in sympathy with the objective of S. 3883, we have several comments about the bill which we advance for the committee's consideration:

1. We question the advisability of allotting two-thirds of the appropriation to the States, with the Secretary of HEW retaining one-third of the funds to use where and as he sees fit. The first year authorization would reserve $150 million of the $500 million for HEW. We repeat our often stated comment before this committee that we do not believe all wisdom lies in Washington, in HEW or in the Office of Education.

We are aware of HEW's penchant for contracting with profitmaking corporations who will do almost anything for a profit.

We reject the idea that public and nonpublic agencies cannot handle programs effectively. We urge that the one-third reserve for the Secretary of HEW be eliminated and that all funds be committed to the States.

We recommend that the set-aside, which is unusual in legislation, be eliminated.

2. We are aware that the bill does not provide for approval of district projects by its State education agencies and that the allotted funds are to be distributed directly by HEW to local districts within a State. Such a policy is practical in this situation.

Under the kind of operation we have today, we believe there is a practical reason for this and we would accept it.

3. As indicated above, we strongly object to granting HEW authority to contract with profitmaking agencies to carry on activities which are the legal prerogative of public agencies.

We do not object to grants or contracts with nonprofit organizations per se, since it is easy to imagine situations where only a nonprofit, independent agency can function in the field of integrated education in the face of negative attitudes of official, legally responsible public agencies. But we see no possible reason why any corporation or person should profit financially from a program aimed at alleviating injustice.

4. The bill, and the accompanying publicity, refer to de facto segregation which exists in some major cities. However, the bill, weighted as it is to de jure segregated systems, holds out more promise than the formula fulfills.

We believe it engenders false hopes which cannot be realized under the formula and the comparatively small amount of money involved for de facto situations. There appears to be no method of assisting a city system which seeks to eliminate racial imbalances through district reorganization.

One of the great problems, in our opinion, facing the school systems of this country are the problems in the large cities. Many cities want to move forward but the formula in this bill works against them.

Unless it were fully funded there would be little or no money for them.

5. We feel that the formula as outlined in the bill seems to reward school districts which have resisted integration at every possible point to date.

The bill speaks specifically to districts which are under court order. What about assisting those many districts which acted in good faith, without the necessity of court orders or HEW investigation?

Are they to receive no assistance?

The philosophy of rewarding those who resist is one which troubles us. We recognize that the objective is to assist children who by geographical accident live in districts where officials are not acting in good faith.

We wish that legislation could be enacted which would provide for criminal proceedings against the public officials—school boards, mayors, Governors—who thwart the law of the land.

We feel that present laws which permit cutting off of Federal funds result in punishing innocent children for the delinquency of adults.

Let me say that there are many districts in the South that in good faith integrated, filed their plans. There was no consideration given to them.

6. In keeping with the above, we believe the law should provide that school districts which transfer, lease, or sell public school property to private groups for the purpose of establishing racially segregated schools shall not participate in the provisions of S. 3883.

It would be incongruous to allow those districts that have been using public funds to establish private schools for the purpose of maintaining segregation, to secure additional funds if they were doing something toward the integration of some schools.

In addition, safeguards preventing use of Federal funds to supplant local and State funds where desegregation occurs should be written in the bill.

Furthermore, districts which refuse other Federal funds because of the cut-off provisions of the Civil Rights Act of 1964 should not be permitted to receive funds under this act.

As I think of it now, I can identify only some school districts in Louisiana which are refusing Federal funds because of their refusal to integrate their schools.

7. We believe that if a school district's plan for integration includes some expenditures for pupil transportation, the use of Federal funds for this purpose should be permitted—but should not be required.

No Federal officer or agency should be allowed to require pupil transportation as a condition for receiving funds if, in the judgment of the local district, such transportation is impractical or inefficient.

But remember that there are many districts that transported black students for many miles for many years to keep them from going to white schools.

8. We believe that funds for school construction are essential, particularly in de facto segregation situations. We do not believe that it is practical to attempt to patch up a faulty system without provision of substantial funds for necessary facilities.

We believe the large urban centers have a tremendous problem in their schools, and school construction money is imperative.

Now we come to the most important part of this whole dialog.

9. We wonder why the objectives of S. 3883 cannot be accomplished through existing legislation, such as title I of ESEA and title IV of the Civil Rights Act—plus a substantially funded school construction bill.

We believe these could accomplish the purpose of this bill. We don't need a proliferation of more laws. We have laws enough if we can just provide the money. This is our feeling.

10. We repeat that the best basic answer to the problem of education is the enactment of general Federal aid to education, providing at least 30 percent of the cost of education from the Federal Government, with the provision that any school receiving Federal aid must be in compliance with the Civil Rights Act of 1964.

The Federal Government has moved into assumption of the basic cost of all the social services of the country with the exception of education.

We still hold to this idea that education is a local matter, and that it depends entirely upon a tax on property. Property is no longer a measure of wealth.

This is one of the reasons why the schools of this country cannot progress to the point they should. So the Federal Government has to move, in our opinion, to an assumption of the rightful share which we believe to be 30 percent of the cost of education.

Thank you for this opportunity to present these viewpoints. I will be glad to answer any questions you have, sir.

Senator **Pell**. I again wish to thank you for testifying. I understand you had to inconvenience yourself and change some travel plans to be here. I am most appreciative of it.

It is surprising to me that a bill of this sort, exceedingly controversial in its thrust, exceedingly large in its amount, has generated so little real substantive interest.

Indeed, from the press viewpoint, we have no one at the press table. To get witnesses to come before us has been like pulling teeth.

From the administration point of view, it took 2 weeks to get them up.

Then everybody gets very excited and very heated when we don't get a bill through.

The subject matter of this bill should get people to come forward to express their views.

NECESSITY OF LEGISLATION—MONDALE AMENDMENTS

In essence, would you like to see this bill passed as is—with the Mondale amendments, or if not with those amendments not at all?

What would be your viewpoint?

I am talking now about the $150 million appropriation we will be discussing this afternoon.

Mr. **Lumley**. If you are going to pass this bill with the little amount of money that will be provided, you should pass the Mondale amendments.

Senator **Pell**. We are talking of two bites, a small one of $150 million, out of current authorization and then the second one of $1,350 billion to be authorized.

The question I am putting to you is: Provided the Mondale amendments are attached to it, do you think the national interest would be better served if both of these bites were enacted?

We may be facing such a black and white choice, and I am interested in what you think.

Mr. **Lumley**. This is a difficult question to answer, in a sense. If I were answering philosophically for the whole thing, I would say let us forget about this whole bill and do the thing with the laws that we have, providing the money.

But I have to be pragmatic and admit that we can't get more money for title I, and that we can't get more money for these other things.

Therefore, I have to come back and say the administration has now proposed something and, therefore, let us take this but let us amend it to the degree that we can to make it fit the situation as we see it.

No. 1 would be the Mondale amendments, starting with your $150 million, which is a small bite to get this thing started.

Senator **Pell**. And if the Mondale amendments are rejected—and here I would add that I support all three of them—would you be opposed to the bill?

Mr. **Lumley**. Then I would say reject the bill, yes, sir.

Senator **Pell**. I appreciate your frankness. I realize it is hard to answer these questions specifically when they involve so much a general nature.

As to the initial funding coming up this afternoon. The point was not made clear whether one-third would be retained by the Secretary or not. We tried to develop this information on the floor yesterday but failed to elicit a response.

The bill itself does not specifically spell out that point.

ELIGIBILITY

There is one other point. While the bill speaks specifically of districts that are under court order, that is only one of the three types of eligibility.

Mr. **Lumley**. That is right.

Senator Pell. The other types could very well apply to those districts which have already complied. So the funds are available to districts not under court order.

Mr. Lumley. But it is after a certain date, the two fiscal years preceding the fiscal year for which the allotment is to be made. The point I was trying to make to you is that in the formula the allocation is doubled. The children are counted twice. This is why I say you are giving a priority to the people who are having to be forced to do something.

The other point that I am making is that this particular bill holds out the hope that there will be money for de facto segregation. But again, pragmatically, we know that that kind of money is not going to be appropriated even though it is authorized.

If it is not appropriated, then the priority is going to go to the 17 States, the 11 dual States plus six others that have certain districts within them that are either under court order or under some order from HEW.

Senator Pell. I think in this case you will find the money will be appropriated because the administration is putting its weight behind it.

Mr. Lumley. Well, let us hope so. But if this money is appropriated, please make sure that it doesn't come out of some other education money that is desperately needed.

Senator Pell. I share your concern.

CONSTRUCTION AUTHORITY

What is your view with regard to construction funds that are authorized by this bill?

Mr. Lumley. They are limited. I would like to see them expanded.

Senator Pell. More construction funds?

Mr. Lumley. Yes.

TREATMENT OF BLACK TEACHERS—TRANSFER OF ASSETS

Senator Pell. We have heard in this committee a good deal about the plight of black teachers in the South with regard to transfers and actually being fired at times with the advent of desegregation.

Could you spell out to us your own knowledge or views as to whether this is a correct statement or not?

Mr. Lumley. The NEA investigations indicate that there has been a substantial dismissal of black teachers, and particularly principals, in elementary and junior high schools.

Let me say that one of the things the NEA has worked hardest at in the last few years has been to try to place teachers in other positions or to hold the districts to the law and keep people in the jobs that they are entitled to.

President Fischer did present some material to the Mondale committee of reports on investigations in Louisiana and Mississippi on this particular question.

I would be glad to furnish it to your committee, too, Senator, if it would be of value to you.

Senator **Pell**. The Mondale committee and this subcommittee are working very closely. The material furnished to the Mondale committee will be sifted out and given to us. I wouldn't want to duplicate it.

Mr. **Lumley**. You will have a complete story there, not only about the effect that this displacement has had on teachers, but also about the school buildings, school equipment, schoolbuses being transferred from public schools to the private academies.

We have furnished a complete report of the investigations that we made in these States.

Senator **Pell**. Does this include the record of transfer of public assets to private schools, statistical and factual information?

Mr. **Lumley**. Yes, sir.

Senator **Pell**. How many black teachers in the country belong to the NEA, what percentage?

Mrs. **Gereau**. We don't identify our membership by race.

Senator **Pell**. Do you have an instinctive feeling?

Mrs. **Gereau**. Over 50 percent of the southern ones. In New York City they would belong to the American Federation of Teachers.

Senator **Pell**. On the national basis, what percentage of white teachers belong to NEA?

Mr. **Lumley**. 1,100,000 teachers belong to the NEA. There are about 900,000 additional teachers. I think the American Federation of Teachers probably has half of that 900,000.

Mrs. **Gereau**. The American Federation of Teachers represents 150,000 teachers.

Mr. **Lumley**. So there are 1,100,000 or 1,250,000 teachers who belong to an organization out of a total of 2 million, roughly.

Senator **Pell**. Over half of the teachers in America belong to NEA?

Mr. **Lumley**. That is correct.

Senator **Pell**. Of the black teachers in America, what percentage of them belong to NEA on a national basis?

Mr. **Lumley**. On a national basis, I would say the black teachers would have a higher percentage. It would probably run 60 percent.

In the 11 Southern States where there were dual associations, all but Louisiana and Mississippi have merged into a single association. In Louisiana and Mississippi only the black associations belong to the NEA. The white associations have been disaffiliated because they would not merge with the black association.

So our black membership, I would assume, would be higher than the white membership in the national figure.

UTILIZATION OF EXISTING STATUTORY AUTHORITY

Senator **Pell**. You spoke of present programs such as titles I and III of ESEA that touch many of the problems to which this emergency bill is directed.

The criterion in ESEA is poverty and disadvantagement, not segregation, per se. This bill is concerned more with segregation.

Mr. **Lumley**. That is correct. But if you look at the criteria that have been developed for the use of this emergency $150 million, you will find that the list of projects or things that could be done are practically a duplication of what could be done under title I.

I grant that it is for a different purpose.

Senator **Pell**. In your view, would it be better to stick to title I?

Mr. **Lumley**. This would be my feeling, yes. I think if the school districts were given the additional money to do this job, and every district were required to comply with the Civil Rights Act, we would accomplish the same thing, and accomplish it more efficiently.

MONDALE AMENDMENTS

Senator **Pell**. Do you have any more views with regard to the Mondale-Javits amendments that may be attached to the pending appropriations bill?

Mr. **Lumley**. We are for them. We are in agreement with them.

OTHER ETHNIC MINORITIES

There is another problem we have not talked about. We have been talking principally black and white. There is another minority problem.

I am bringing this up because it emphasizes in my mind the need for additional money in title I and title III ESEA and title IV of the Civil Rights Act. The problems of the Spanish Americans, Mexican Americans, Puerto Ricans should be recognized and educational programs provided for them.

Of course, as I mentioned before, this kind of segregation is not the court order problem, but is rather an urban problem. It may produce some blowups if we don't have the money to meet these needs.

Senator **Pell**. I would add here that in my part of the country it is not only Spanish-speaking but Portuguese-speaking.

Mr. **Lumley**. That is right. I shouldn't forget to mention the Indians, too.

INCLUSION OF PROFITMAKING ORGANIZATIONS—PERFORMANCE CONTRACTS

Senator **Pell**. In your testimony you say you see no possible reason why any corporation or person should profit financially from a program aimed at alleviating injustice.

In this connection, what is your view with regard to performance contracts, where profitmaking, private firms take on jobs, find they can do them in a competitive way, and have tests at the end of the period of time to see whether they have delivered or not, and if they have not delivered they are not paid?

Mr. **Lumley**. This would take a long discussion but I will make it as brief as I can state philosophically we are opposed to performance contracts with private industry.

We believe a performance contract to increase the reading rate of children is measurable on a scale when you teach for this particular scale, but we are not sure that this is the educational process that you want to measure.

We believe that if there is a performance contract as such, or an evaluation, the school district should be the contracting agent.

One of the things we have talked about before this committee and other committees—and your committee did include it last year—is evaluation of what is being done in the schools.

There is more involved than rote learning. The performance contract in reading can be measured on what? On the increase in vocabulary? Or in mathematics, by computations?

But has this increased the thinking power of the boy or girl, the social conscience of the boy or girl?

We are opposed to this movement for performance contracts as it is presently being conducted.

Again, I guess we have to add to that the performance contract done by the Office of Education working with school districts does not always involve the whole educational community.

The application of evaluation is sound, but the evaluation should be an integral part of the school program. Let us make the schools produce. Let us do this and I think we will have a better situation and a better school system.

Part of this, let me say to you, sir, is personal opinion. I am not too sure I could say this is a National Education Association policy as such. Generally, I think they would agree.

Senator **Pell**. I would think they probably would. I don't think I agree with you, but I do think you speak for the NEA viewpoint.

As you know, for some years I have been interested in this idea of general education tests, somewhat like the New York Board of Regents exam, to bring all the schools up to a certain floor and do it on a voluntary basis. To this concept the NEA is opposed.

I think these outside contracts and tests, not as a general rule but as an occasional spur, are probably pretty healthy things.

I wouldn't want to delude you that I don't think they have merit. I realize the justification for what you are saying, that a performance contract will test, maybe, vocabulary, but will not test many other learning factors.

But if a performance contract is written in such a way that it would include a wider objective, one that might achieve the desired result, or if it is simply a question of trying to increase the vocabulary on a special basis, then it would be justified.

I question the automatic objection to the idea of outside tests, the belief that there is something wrong with a profitmaking body doing it, is a most instinctive reaction.

Mr. **Lumley**. I think my objection to profitmaking corporations doing this is that people seem perfectly willing to pay $900,000 to a coropration to do something that the school district can do and would be perfectly willing to do for half that price.

But as has been brought out before in many of the committees of this Congress, we pay high prices. The Job Corps spends $2,000 per pupil to do something because they say the schools fail.

Well, the schools don't have $2,000 per pupil to do it.

Let me say this, Senator: When we come to the evaluation of what is being done, you have to depend on the test. If I have a performance contract—and let me say it would be a fine business to get into—and I can make up the curriculum of what I am going to do and then evaluate what I have done, I can't lose.

Let me say this, too: We have the experience in New York State of the regents' examinations. One of the greatest problems that they had in New York State after the establishment of the regents' examinations was to keep the teachers from teaching for the test. They kept the test from year to year and taught for those tests. This is one way to achieve high scores.

There is a certain level of pupils who will learn whether it is under a performance contract, whether they are taught by a teacher, or whether they learn themselves. But you have another group of pupils who have to be taught and taught in small groups.

So here someone takes a performance contract and works with a very selective group. They are paid a high price to do this. Then someone says, "These people are achieving something the schools can't do." The schools can do this.

I am trying to say that the schools should have the money to do this, should be evaluated, and should be kept to this same kind of a level. I think they can.

Senator Pell. I think that both approaches should be used. I would like to get away from this automatic rejection of the idea that a profitmaking group should not be allowed to participate.

I speak here, I guess, as a bleeding-heart or knee-jerk liberal in normal terms. But I do think the objection can be too far and too extreme in this regard.

Mr. Lumley. I guess I can agree with you, sir, that the competition of this would be fair if it were done on the basis of a controlled pilot project, and if at the end of that time an evaluation were submitted to you showing that in Texarkana they taught reading to 1,600 or 6,000, whatever it is, pupils, and they were able to achieve a certain level of reading growth within that year's period at a cost of so much per pupil. This information should be spelled out, but it should not indicate that a particular company was able to do this and the teachers weren't able to do it. This is the part that I am objecting to.

If there is a fair comparison to what is being done, and there is an evaluation of that, then I can withdraw my objection. I am not here to say that there shouldn't be profitmaking organizations in this world.

I am simply saying that generally there is no reason to get a profitmaking organization into this when you have nonprofit operations and you have school systems, you have all these agencies, universities, colleges, to do all of this experimentation.

Senator Pell. This problem will probably increase as time goes on. As a general rule, in-house testing and in-house measurement usually needs a little checking from out-of-house measurements.

I know in any operation in which I have been, I have felt a little self-satisfied after a period of time that I am doing it the right way, and yet I am sure that somebody can come into my office and show me mistakes that I am making.

Mr. Lumley. Furthermore, you don't find any opposition from the National Education Association to the college boards. These are tests that are given to high school graduates for entrance into college.

My point is we are not opposed to evaluation.

Senator Pell. It seems to me you have been opposing my bill for a voluntary national merit test or examination for about 8 years.

Mr. Lumley. I think we suggested modification, didn't we? I don't think we were outright opposed to it. Didn't we propose some modifications.

Senator **Pell**. You supported the advisory council, which is the do-good side of it, something akin to motherhood and apple pie, but you didn't approve the guts of it, which was to do exactly what you said you were for 2 minutes ago—testing.

Mr. **Lumley**. If we had done that, certainly we would be inconsistent. I would be very happy to reevaluate that, Senator, and come back to you.

Senator **Pell**. There is nothing wrong with being inconsistent. We are inconsistent all the time. I am for import quotas on textiles and I want them eliminated on oil. Many of us are inconsistent, but let us admit our inconsistency.

Mr. **Lumley**. There are times that I can be inconsistent, but in this particular instance I didn't realize we had taken a stand in opposition to your bill.

I thought we had a modification. I didn't think we were in opposition to the guts.

Let me reevaluate and come back to you on that.

Senator **Pell**. What we have done now is passed the motherhood and apple pie portion, but we still haven't accepted the concept of voluntary tests that high school students can take when they ask to, with the idea being to bring pressure on school committees to raise the curriculum offered.

Mr. **Lumley**. I would be happy to reevaluate it, Senator. As you know, we have supported the national assessment.

Senator **Pell**. For several years I have been hearing about the national assessment. We are just waiting for that result to come in and then, as I am told, you can form a view on my bill.

Mr. **Lumley**. The first report from the national assessment is to be made on the 8th of July. After that you can have an answer.

Senator **Pell**. Then we will introduce this bill again, and we hope that maybe we can get it through.

Mr. **Lumley**. All right, sir.

Senator **Pell**. I thank you very much for your kindness in being here, very much indeed, and your courage in having an opinion on this bill and expressing it, which nobody else has done.

I do have one other question which has been submitted on behalf of the minority, it is a very valid question.

UTILIZATION OF EXISTING STATUTORY AUTHORITY

They point out that since titles I and III ESEA are required to be distributed by formula anyway, wouldn't this factor present a difficulty when it came to providing a special instrument to help in the desegregation problem?

In other words, I and III are all inclusive and do not cover these problems in the areas that are seeking to desegregate.

Mr. **Lumley**. That is a good question. I would assume there would have to be some amendment to the formula for this purpose. Actually the thing I am saying here is that the formula proposed in this bill does just the opposite of the formula in title I and title III.

Where titles I and III give money on the basis of disadvantaged, money is going into the large urban centers where there are de facto problems.

Here we are talking about a formula that is putting the larger percentage of money in the districts where there are court order or HEW order for desegregation.

It seems to me that what this bill says, really, is that if you fought segregation and you fought it hard enough, then the Government is going to give you money now to do what you should have done 15 years ago.

This is what we think is basically wrong and why we feel that the people who have been responsible, who have been short-changing these children, should be punished for what they have been doing to boys and girls. The Government should not come along and say, "Now you have fought it long enough. You are pretty good fellows, so we will give you double the money for you to do something."

You are more optimistic than I am by saying that you think this bill would be fully funded. It still does not give the de facto people, the urban people, the money that they need. Those are the people who are willing to do something if they only had the money to do it.

Senator PELL. If they meet some of the trigger mechanisms, the de facto people do not require court orders.

I agree with you about this initial finding, that it will not go into the de facto areas.

Mr. LUMLEY. Yes.

Senator PELL. Thank you very much, indeed, for your willingness to testify and have an opinion.

Mr. LUMLEY. Thank you, sir, and we will get the material to you that you wanted.

Senator PELL. Good.

The next witness is Howard A. Glickstein, Staff Director, U.S. Commission on Civil Rights.

STATEMENT OF HOWARD A. GLICKSTEIN, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY JONATHAN FLEMING

Mr. GLICKSTEIN. Mr. Chairman, my name is Howard A. Glickstein. I am Staff Director of the U.S. Commission on Civil Rights. I am accompanied by Jonathan Fleming, my assistant.

I appreciate this opportunity to testify before the Subcommittee on Education on S. 3883, the Emergency School Aid Act of 1970.

I was interested in your remarks awhile ago, that this was a controversial bill, and you were having trouble getting people to testify on it, that it required some courage to appear and testify.

But I think the Commission on Civil Rights has never shied away from anything controversial, and I hope, as exemplified by our Chairman, we have shown courage in the things we have done.

The Emergency School Aid Act is the first legislation sponsored by any administration with the specific purpose of providing financial assistance to local school districts for the purpose of eliminating racial isolation, whatever the cause.

As such, the Commission on Civil Rights believes that the Emergency School Aid Act of 1970 deserves the constructive support of all persons who believe that this Nation's future rests on a racially and ethnically integrated society.

In 1967 the Commission on Civil Rights made recommendations to eliminate racial isolation in the Nation's public schools. Among these were recommendations that Congress should authorize financial and technical assistance, including programs of substantial financial assistance to provide for construction of new facilities and improvement in the quality of education in all schools.

The Commission made its recommendations with the knowledge that the Nation then was, and still is, facing a racial crisis which was described by one member of the Commission as,

> [A] collision course which may produce within our borders two alienated and unequal nations confronting each other across a widening gulf created by a dual educational system based upon income and race.

These recommendations, made more than 3 years ago, were ignored by the administration and, with the exception of a few Members, by Congress.

During these years, the one program designed specifically to assist desegregating school districts—title IV of the Civil Rights Act of 1964—until last year was funded at less than $12 million annually, a pathetically trivial amount of money when measured against the enormity of the problems of desegregation.

It was for these reasons that, immediately following the President's message sending to Congress the Emergency School Aid Act, Father Theodore M. Hesburgh, Chairman of the Commission, publicly applauded the President for his action.

In his statement, Chairman Hesburgh called particular attention to the President's words concerning the issues involved in desegregating schools, reducing racial isolation and providing equal educational opportunity:

> Few issues facing us as a nation are of such transcendent importance; important because of the vital role that our public schools play in the Nation's life and in its future; because our national conscience is at stake; and because it presents us a test of our capacity to live together in one nation in brotherhood and understanding.

Chairman Hesburgh also noted the President's unequivocal statement on the harmful effects of racial segregation on education and the importance of a desegregated educational experience. In the President's words:

> It is clear that racial isolation ordinarily has an adverse effect on education. Conversely, we also know that desegregation is vital to quality education—not only from the standpoint of raising the achievement levels of the disadvantaged, but also from the standpoint of helping all children achieve the broad-based human understanding that increasingly is essential in today's world.

As the President noted, desegregation makes good educational sense. Over and over again it has been demonstrated that integration of schools is the greatest single factor contributing to the educational success of minority group children.

The Commission on Civil Rights demonstrated this in its landmark report, Racial Isolation in the Public Schools, in 1967.

Dr. James Coleman also demonstrated the same findings in his monumental study, Equality of Educational Opportunity.

Most recently, the New York State Board of Education reconfirmed these findings in its own study of Racial and Social Class Isolation in the New York Public Schools.

Currently, the Commission on Civil Rights is studying the effects of ethnic isolation on Mexican-American students in five Southwestern States.

Our preliminary analysis indicates that Mexican-American students suffer educational damage when they attend ethnically isolated schools.

Mexican-American students who attend ethnically integrated schools achieve better and have lower dropout rates than Mexican-American students who attend isolated schools.

There is nothing mysterious about these results. There is no magic in attending school with a white child. It is simply this: Academic success, particularly verbal ability, depends in large part upon one's immediate experience with the world at large.

If this world is artificially narrowed, if experiences with the majority group are denied to minority group children, it is to be expected that they will not achieve as well in an educational system in which understanding of, and experience with, the mainstream of society is the key to success.

If this is true, and experience demonstrates that it is, it follows that white children also are harmed by segregated education. Indeed, there is mounting evidence that white students also suffer educational and psychic damage from segregated schooling.

In recent testimony before the Senate Select Committee on Equal Educational Opportunity, Dr. Kenneth Clark stated:

> There is strong evidence to suggest that racial segregation . . . is . . . detrimental to privileged middle-class and working-class white children.
>
> Segregated schools and cruelty in American ghettos are . . . deadening and destroying the ethical and personal effectiveness of American white children, and doing so much more insidiously than they are destroying the personal and human effectiveness of American black children.

I think that it is readily apparent to any observer of the American scene during the last 5 years that white students appear to be suffering from their frustration and inability to reconcile the sharp divisions between white and black, between Anglo and Mexican-American, between the rich and the poor, and between our rhetoric and practice.

As Kenneth Keniston recently wrote in the Yale Alumni magazine:

> It does not take a psychologist to emphasize that the causes of student protest lie not only in the psyches of the students, but even more, in the world we inhabit.
>
> The shameful legacy of racism, America's dubious imperial role in the world, the inertia and compromise of our universities—these are simple facts against which the ethical impulse of the young is directed.

It is not the national policy of this country to educate children merely to be successful in an apartheid status or in artificial territories created on the basis of race, color or national origin. And, it is not the policy of the Nation to educate its children in the false notions of racial and cultural superiority.

This is the United States, we all are Americans and all of our children are being educated in the American experience.

This experience includes whites, blacks, Mexican-Americans, American Indians, Puerto Ricans, Cubans, other persons of Spanish ancestry, people who speak French as their home language, and people who speak Swedish, German, Portuguese and Italian as their home languages.

We in this country are committed to the ideal of a unified people and the basis for achieving a unified Nation, as the President observed in his message to Congress accompanying S. 3883, is an integrated educational experience.

It is often argued that integration of the schools will not work and never has worked. Chairman Hesburgh, in his appearances around the country, often is challenged to give some examples of successful school desegregation.

He is not here today, but I would like to give you five examples of successful school desegregation in school districts studied by the Commission this year.

HOKE COUNTY, N.C.

This school district has an enrollment which is 50-percent black, 15-percent Indian and 35-percent white. By using geographic zoning and grade reorganization, the county has achieved racial balance in its seven schools.

An evaluation conducted by Duke University shows dramatic increases in achievement for blacks and Indians and the expected rate of achievement for whites was maintained. As you know, the superintendent of this district, Mr. David Abernathy, testified before the Select Committee on Equal Educational Opportunity last week.

NEW ALBANY, MISS.

The New Albany schools enroll 2,000 students of whom 29 percent are black. Schools have been desegregated through zoning, grade reorganization and busing. Testing of elementary school children indicates that new educational techniques together with desegregation have resulted in major achievement score increases for black children and increases in achievement scores by white children as well.

MORRISTOWN, N.J.

Morristown schools have been desegregated since 1962. The desegregation plan uses zoning and grade restructuring. Approximately one-third of the students are bused.

In 1965, the local Morristown White Citizens Council asked to be allowed to compare achievement scores of white students before desegregation with their scores after desegregation. This demand was granted and the citizens found that all students were progressing and that no educational disadvantages had been suffered by white children.

PROVIDENCE, R.I.

Providence undertook desegregation in 1966. The process has not been easy, but with the exception of one high school and the recurrence of racial imbalance in several elementary schools the city has been able to maintain racial balance in its public schools.

The experience of Providence, which is the subject of a special report soon to be published by the Commission, demonstrates that the mechanics of desegregation is the easiest part—providing integrated education without new forms of racial discrimination and disharmony arising requires greater effort on the part of a great many people.

Not all problems in Providence are solved, but the Commission has great respect for a city which has been willing to act to eliminate racial isolation in its schools.

MOORE COUNTY, N.C.

There are approximately 10,000 students enrolled in the Moore County schools, 70 percent of whom are white and 30 percent are black.

In 1966, Moore County integrated the schools in two of its three geographic zones. The county received a title IV grant at the time to assist the desegregation of the schools and to prepare teachers for integration. In September 1969, desegregation was completed when seven small high schools were consolidated.

The new high school has approximately 1,400 students, 40 percent black and 60 percent white. To assist in the transition, a title IV grant was made to the county for these purposes:

In-service training for teachers assigned to the new high school;

Seminars for parents and community leaders to make them aware of their roles in successful desegregation; and

Meetings of student leaders from the seven high schools to familiarize the students with each other and the new high school.

The county has the same black administrators it had before unification and there has been no reduction in the number of black teachers. All student clubs and sports activities are integrated.

Each of the five school districts that I have mentioned required substantial amounts of financial and technical assistance to accomplish the elimination of racial isolation.

The Emergency School Aid Act would authorize and provide financial assistance in large enough amounts to enable other school districts to achieve what has been accomplished by these five districts.

Existing Federal educational assistance programs are inadequate to do the job. Title IV of the Civil Rights Act of 1964, which authorizes financial and technical assistance programs to school districts undergoing desegregation is underfunded and weakened by statutory language which prohibits effective action to eliminate racial isolation.

Title IV primarily provides assistance in planning for desegregation in a narrowly-defined sense through university desegregation centers and State education agency desegregation units.

Local education agencies may apply for direct grants to pay the cost of training teachers and school personnel in dealing with problems incident to desegregation and employing consultants to advise on problems incident to desegregation.

In 1969, 81 local school boards operated desegregation projects and 16 university desegregation centers and 24 State education agency desegregation units provided technical assistance. Total title IV funding that year was $24 million.

Nevertheless, of nearly 4,000 applications for assistance, little more than half have been granted due to lack of funds and personnel.

Moreover, this underfunding has caused the Office of Education to establish an order of priorities in making grants to local school boards under title IV which, in effect, precludes grants to districts once desegregation has been technically accomplished—even though that district may be facing serious problems incident to desegregation.

Title I of the Elementary and Secondary Education Act provides assistance to school districts with concentrations of economically disadvantaged children.

Studies have shown that the administration of this program has not been effective and that in spite of the enormous appropriations in excess of $1 billion annually, funds have been so diluted as to be ineffective.

In fiscal year 1966, for example, the average title I per pupil expenditure was $119. Yet, the GE TEMPO Study found that the majority of title I projects in the 60 districts studied provided an expenditure of less than $5 per pupil—an amount hardly sufficient to provide any impact for the particular project.

One official has been quoted as saying:

> The range of services may look impressive, but, in fact, a child may only get two of those 50 services—a pair of eyeglasses and a field trip.

Furthermore, there are instances in which title I funds have been used in opposition to school desegregation by funding special programs only in black schools, thus forcing black parents to choose to resist integration into white schools where title I programs are not present.

An incident in Bleckley County, Ga., reported in the Commission's Report on Southern School Desegregation 1966–67 illustrates the point.

The county opened a new all-Negro elementary school in 1966. Title I funds enabled the county to stock the school with audiovisual aids, library books, and playground equipment; provide it with a social worker and medical and dental services; give the students free lunches; pay the salaries of two additional teachers and purchase $15,000 worth of miscellaneous school supplies, including water coolers and stage equipment.

The superintendent in his written explanation to the Commissioner of Education about the lack of desegregation under freedom of choice in his district stated that all of the children in the new school chose to remain in the school.

Factors, "which had some bearing on this decision," he wrote, "are the new plant, additional teachers, 100-percent free lunch programs, and many additional services, materials, and supplies which are made available under title I."

In at least one district the Commission found that title I funds were used to purchase mobile classroom units for overcrowded Negro schools.

In still another district, title I funds were used to build separate gymnasiums for white and black schools which were 1,000 yards apart. It is essential that the most careful safeguards be imposed to prevent similar abuses under the pending legislation.

Title III of the Elementary and Secondary Education Act has been an effective source of funds to assist desegregation and elimination of racial isolation but this has been solely on a demonstration or innovation basis.

The Commission consistently has recommended the adoption of a substantial investment of Federal funds in assisting school districts to desegregate and to eliminate racial isolation.

In our 1966 report on school desegregation in Southern and border States, Father Hesburgh wrote:

> The first move toward a solution of (de jure segregation) was to declare that the de jure, dual educational system was wrong, undemocratic, and un-American.
>
> The *Brown* decision in large measure did this. But practically nothing happened in fact. . . . Ten years after the *Brown* decision, a small fraction of the Southern Negro students were enrolled in formerly all-white schools.
>
> Title VI of the Civil Rights Act of 1964 promised greater progress in this area, for it said to the school system . . . desegregate or Federal funds may be cut off. . . . (T)here is (another) problem . . . which . . . must be overcome. . . . The problem stems from the fact that many Negro schools in the South are inferior to their white counterparts. . . . Thus, it is important to stress not merely the steps which must be taken in good conscience to comply with the law, but our commitment to positive measures which will mean better education for all in a context of equal opportunity for all. . . . (W)e need the adding on of Federal funds in the South, provided that the local communities are committed to one good school system for all the children of the local community.

The Emergency School Aid Act offers substantial promise of being able to achieve the goals suggested by Father Hesburgh.

The Emergency School Aid Act, as you know, provides financial assistance to local school districts in order to meet the costs of desegregation or to eliminate racial isolation in the schools.

The act also provides financial assistance to so-called racially impacted school districts to carry out interracial educational programs and compensatory education programs in racially isolated schools; $500 million is requested for the fiscal year ending June 30, 1971, and $1 billion for the following fiscal year.

A massive outlay of funds is necessary if we are to desegregate our schools. Unfortunately, integrating schools is not as easy as integrating a lunch counter.

Funds are necessary to upgrade teacher skills, to train school personnel in the problems of desegregation, to renovate and remodel school buildings, to carry on community relations programs so that desegregation can proceed smoothly, and to purchase new curriculum materials and classroom equipment.

I have merely skimmed the surface of problems which require funds to solve.

Hoke County, N.C., which I mentioned earlier as an example of successful desegregation, used direct grants under title IV of the Civil Rights Act of 1964 to retrain teachers and to conduct training programs in problems incident to desegregation.

New Albany, Miss., used Federal funds to hire consultants to develop a new instructional program intended to provide integrated quality education, to acquire new instructional materials and to conduct community relations programs in preparation for desegregation.

The superintendent of Moore County, N.C.—another successfully desegregated district—reported that successful desegregation was helped substantially by three title IV grants which built better interracial teacher relations and thoroughly prepared the teachers for integration.

Our experience leads us to the conclusion that a prescription for disaster is to attempt to desegregate schools without preparation and with little or no investment of funds in training teachers to deal with problems incident to desegregation.

For this reason alone, the Emergency School Aid Act, or some form of assistance similar to that provided in the act, is an absolutely necessary adjunct to enforcement of school desegregation.

In fact, every successfully desegregated school district studied by the Commission on Civil Rights has made ample use of existing Federal education programs; we have rarely discovered a successfully desegregated district which did not have some desegregation project funded by the Federal Government.

I would like to point out that the Emergency School Aid Act will also assist school districts to eliminate ethnic isolation of Mexican-American, Puerto Rican and other Spanish surnamed groups. It is the first legislation designed to accomplish this.

This committee should be aware that the educational problems of Mexican-Americans are severe and that they also have been segregated into inferior and inadequate schools with resulting educational harm.

As I have mentioned, the Commission on Civil Rights currently is studying ethnic isolation of Mexican-American students in five Southwestern States. Frankly, we have been surprised at the degree of segregation of Mexican-American students in the Southwest.

Today, there are about 1.4 million Mexican-American children in the public schools of the Southwest. About 45 percent of this number are in predominantly Mexican-American schools.

In addition to segregation by deliberate design of school authorities in some areas, ethnic isolation also has occurred for such reasons as historical patterns of settlement in the Southwest and concentration of ethnic groups and economic classes by neighborhood. Because of these patterns of settlement, separate school systems have evolved in many areas of the Southwest.

For example, San Antonio, Tex., has a number of independent school districts. One of these districts, Edgewood, has a Mexican-American enrollment above 80 percent while neighboring districts have lesser concentrations.

This problem—that of racially or ethnically isolated, independent school districts existing within an incorporated city—is not dealt with adequately by the Emergency School Aid Act, and I will propose an amendment to reach this situation.

Regardless of the causes of segregation, Mexican-American students in ethnically isolated schools suffer terrible disadvantages educationally. By the time they reach the fourth grade, nearly one-fifth of all Mexican-American children have dropped out of school permanently.

This percentage is greater than the total dropout rate for Anglo pupils during 12 years of school. Only about half of all Mexican-American students ever graduate from high school.

Recently, the Department of Health, Education, and Welfare has taken steps to require school districts to eliminate segregation of Mexican-American students.

As members of this subcommittee know, programs such as bilingual education and migrant education also exist to improve the quality of education for Mexican-American students.

Mr. Chairman, at this point I would like to submit for the information of the members of the subcommittee a memorandum describing a preliminary staff analysis of the Commission's Mexican-American education study.

Senator Pell. That will be included in the record at the conclusion of your statement.

Mr. Glickstein. Thank you, Mr. Chairman.

There has been some criticism of the funding formula of the act which contains a double-count provision allotting a greater share of funds to school districts desegregating pursuant to an order of a Federal court or under a plan accepted as adequate under title VI of the Civil Rights Act of 1964.

The practical effect is to concentrate funds in the Southern States where the immediate problems of desegregation are.

The Commission on Civil Rights has no difficulty with this approach, although we propose an amendment to expand the provision.

I only regret that these funds were not made available immediately after the Supreme Court's *Brown* decision. At that time, a new constitutional doctrine was recognized and the Nation realized it had an enormous law enforcement problem on its hands—a good proportion of its schools were operating in violation of the Constitution.

It makes good sense to concentrate first on eliminating such segregation.

Other considerations also support the double-count formula. Almost half of the black children in the United States attend school in the South.

Of this number, nearly one-half attend schools in predominantly rural and smalltown communities where resistance to desegregation has been greatest, financial resources least, and the quality of education offered the poorest in the Nation.

When we speak of denials of constitutional rights for 16 years, it is primarily this group of children, who are black, poor, and residents of small rural towns, about whom we are speaking.

In 1968, the Commission held several days of hearings in Montgomery, Ala., on the problems of black residents of 16 predominantly black, rural counties. We found that to be born a black child in the rural South was a guaranteed ticket on a cycle to nowhere.

This is a region of the Nation where even the mandate of *Plessy* v. *Ferguson*—separate but equal—was flagrantly ignored.

In one predominantly black county of Alabama the white high school's physical plant was valued at over $100,000 in 1967, while the black high school was valued at $700.

The superintendent of Williamsburg County, S.C., was quoted last fall as reporting that one out of three black seventh grade students in his school system could not read—at all. He admitted this was his fault—not the children's; he simply ignored the black schools during his tenure.

Thus, to the extent that facilities in the South have been separate but not equal, more money will be required to establish a unitary school system capable of affording equal educational opportunity.

In addition, it is an unfortunate fact that it is in the Southern part of our Nation where the greatest educational disadvantages exist.

The Coleman report indicated that in verbal achievement, the white and black children in rural areas of the South are very far behind their counterparts in the North, and the gap widens over the years of school. The double-counting provisions, therefore, allocate the funds where they today are most needed.

The Commission also urges that funds for transportation services be available under this bill. There is one red herring issue always raised in connection with school desegregation and that is busing.

The Commission dealt with this issue at length in a statement issued in April, and I would like to offer a copy of that statement for the record.

Senator PELL. It will be inserted at the conclusion of your statement with the other document.

Mr. GLICKSTEIN. Thank you.

Every day 18 million children are bused for an annual total of 9 billion passenger miles. People have no objection to busing for sound educational purposes. What many fail to recognize is that integration is educationally beneficial.

First, integration of schools has been demonstrated to be the most effective means of raising the achievement level of disadvantaged black and brown students; it does not harm white students and, in fact, it benefits them.

Second, busing to integrate schools is cheaper than compensatory education programs. We hear a great deal about exorbitant busing costs accompanied by much deploring of misplaced resources which could be better used to improve schools. But let us look at the facts.

Pontiac, Mich., is a city of 126,000, facing the prospect of busing to integrate its schools under a Federal court order. The city school system contends busing the first year would cost $1.4 million and lesser amounts thereafter.

How much lesser can be learned by comparing busing costs in Berkeley, Calif., a similar-sized city with similar racial population which buses to desegregate its schools completely. There the cost is about $250,000 annually.

Assuming the Pontiac figure is correct, busing the first year would cost $56 per pupil to integrate the schools with positive benefits.

Nationally, by way of comparison, title I was funded at $135 per pupil last year and we have yet to see positive results from this program.

For the cost of a compensatory education program in a single junior high school, the city of Syracuse could have totally desegregated all of its schools.

Furthermore, busing to desegregate schools now accounts for less than 3 percent of the national total spent on school busing each year. Busing to desegregate schools is hardly a major financial drain on the Nation's educational resources.

The Commission has a number of changes to recommend to S. 3883 which we believe will strengthen the bill so that its basic purpose—to eliminate racial and ethnic isolation—may be more effectively accomplished.

1. We recommend that section 5 setting forth the purposes of the act be amended by deleting language which authorizes the use of

funds for educational programs unaccompanied by desegregation or the elimination of racial isolation.

The Emergency School Aid Act should not contain any financial incentives to continue the status quo in the maintenance of racially isolated schools.

School districts having "racially impacted" schools are eligible for title I funds and title III funds which will accomplish purposes identical to those proposed under Section 5(a)(3) of the bill.

Experience has shown that unless financial assistance is tied specifically to accomplishing desegregation or the elimination of racial isolation local school systems will tend to choose projects which perpetuate segregation.

Therefore, compensatory education funds authorized under the Emergency School Aid Act should be required to be used as an element in a plan to desegregate or to eliminate racial isolation in the schools.

I might also point out that we have spent nearly $6 billion on title I programs since 1965. There is some question whether emergency school assistance funds should contribute to this pool of money without the requirement that it be used for purposes of desegregation.

2. We recommend that the formula for allocating funds to States be amended to add a third class of districts eligible for double-counting its minority group children: those districts acting to eliminate racial isolation throughout the district pursuant to a plan adopted by a school board which either (1) meets State requirements of racial balance or, (2) satisfies the Secretary that the plan will achieve the elimination of racial isolation.

We believe this provision would apply to school districts complying with racial balance laws, either voluntarily or under State court order.

A similar amendment should be made to the definition of "plan of desegregation" is section 9.

3. We recommend the deletion of the authorization to purchase mobile classroom units in section 6(f). The Commission has documented the use of portable or mobile classroom units to maintain racial segregation.

Mobile classroom units also have been used to establish black annexes to white school buildings as a subterfuge to avoid actually desegregating a school.

4. We also recommend that grants specifically be authorized for the purpose of enabling two or more local school systems to take steps toward eliminating racial isolation in one or more of the districts.

This amendment is designed to assist suburban and urban districts to plan cooperatively to eliminate racial isolation.

Grants should be authorized to carry out surveys and studies to develop plans for redrawing of attendance lines between or among the participating school systems, to plan for consolidation or merger and to plan educational facilities that will provide quality integrated education on a more efficient scale than is now possible.

A preference should be given to applications from school systems or other appropriate organizational units which represent central cities and substantial parts of the surrounding suburbs.

As part of this program, States should be encouraged to enter compacts that would permit communities comprising a single metropolitan area, but located in more than one State, to join in cooperative arrangements for the purposes of receiving the benefits of this new program.

S. 3883 is an Emergency Assistance Act. As an Emergency Act it cannot accomplish all that must be done to eliminate racial isolation in the public schools of the Nation.

For example, no provision is made for a congressionally established national requirement that racial isolation be eliminated in the public schools, as recommended by the Commission in 1967. Nor does S. 3883 address itself to providing quality education.

For too long we have tended to ignore what has been happening inside classrooms. Unfortunately, prohibitions similar to those contained in section 422 of the General Education Provisions Act, which prohibits Federal standards in education militate against effective Federal action to assure that equal educational opportunity will include quality education.

I also believe that the Federal Government must become involved in assistance programs to construct new educational facilities that will provide quality integrated education.

I hope that the Senate soon will be considering legislation to accomplish many of these purposes.

The Commission has a number of caveats concerning the administration of the Emergency School Aid Act, if passed.

The Commission is greatly concerned that the Secretary when establishing priorities among schools with desegregation plans give first priority to districts which eliminate racial isolation in every school in the district.

Some now contend that de facto segregated schools can exist in a formerly de jure school district. Because of this, a very real prospect is raised that a school district may receive substantial financial assistance under the act because it is complying with a court-ordered school desegregation plan, yet continues to operate a number of all-black schools on the ground that they are "de facto" segregated. This probability obviously defeats the purpose of the Emergency School Aid bill.

The Commission has rejected the position that de facto segregated schools are permissible in a de jure segregated district.

Nevertheless, until the legal problems are further clarified, we recommend that the Secretary give preference to districts in which no question exists as to whether the plan accomplishes desegregation of all of the schools.

We also recommend that the Secretary issue regulations to insure that:

No funds go to districts which operate schools with segregated classrooms or which have used testing as a device for segregating children intentionally or with the effect of segregating them on the basis of race, color, or national origin;

No funds go to districts desegregating under court orders which have not been updated to the time of the current school year; and

No funds go to a district cooperating with a private segregated school.

Drastic steps also must be taken to prevent a recurrence of the pork-barrel type of abuses that have occurred under the administration of title I of the Elementary and Secondary Education Act.

It is clear that the Office of Education lacks the manpower to monitor carefully every proposal submitted to it for funding. The guidelines under which the funds are dispersed, therefore, must be restrictive and carefully targeted.

Unfortunately, the Office of Education already has come out with a tentative draft of basic policies for administering the emergency school assistance appropriation of $150 million which causes concern that the money will be dispersed in an ineffectual and wasteful manner.

The draft, which you may have seen in the Congressional Record of June 15, lists at least 40 different activities which could be funded, including hiring of school crossing guards, hallway monitors, training to teach children with "dialect deficiencies", drug abuse seminars, an additional month's salary for school principals, education emphasis week programs and the like.

The list of activities is broad enough as to give rise to apprehensions that emergency school assistance moneys will be converted to general education purposes rather than used to desegregate schools.

I will not comment further on the duplication and overlap with existing programs except to observe that the Bureau of Narcotics and Dangerous Drugs can fund drug abuse seminars.

Why should funds be made available from a school desegregation appropriation for such a purpose?

We can order school desegregation to occur and we can back up court orders with troops, if necessary. But the mechanical achievement of desegregation is meaningless if we are not providing a good education to all the children inside that desegregated school building.

The testimony of the black high school children from the South and North must be taken seriously—there will be major racial problems in our schools this fall if we fail to provide the necessary resources to train teachers, to develop effective community relations programs, to renovate buildings, to develop instructional methods and materials that do not perpetuate racism in the schools.

Those of us who advocate desegregation and who are insisting on compliance with the law have an accompanying obligation not to ignore what is happening in desegregated classrooms.

The Emergency School Aid Act, if strengthened as we have suggested, will be a step in this direction: it will make possible the physical desegregation of the schools with sufficient additional resources to enable teachers, students, administrators, parents and communities to address themselves to the new and different problems of providing effective integrated education.

Thank you, Mr. Chairman.

I will be very happy to answer any questions you may have.

Senator **Pell**. Thank you for your statement. There has been a tentative guideline offered for the $150 million portion. I think it should be put into the record at this point representing the thinking of HEW.

(The information subsequently supplied follows:)

DRAFT OF BASIC POLICIES FOR ADMINISTERING THE EMERGENCY SCHOOL ASSISTANCE APPROPRIATION OF $150 MILLION NOW UNDER PRELIMINARY CONSIDERATION BY HEW, SUBMITTED BY SECRETARY FINCH, DEPARTMENT OF HEW

I. Eligibility criteria:

1. Eligibility for sponsorship:

(a) Eligibility for sponsoring of project is limited to local education agencies (LEA's) which are implementing a court ordered or HEW approved plan of desegregation for September 1970 or which have implemented a plan of desegregation during the school year 1968–69 or 1969–70.

(b) Public or private "community or civic organization," other than LEA's which are assisting a local school system in implementing a court ordered or HEW approved plan of desegregation for September 1970 or which have implemented a plan of desegregation during the school year 1968–69 or 1969–70.

2. Eligibility for receipt of funds:

(a) The application must submit a project which is of sufficient comprehensiveness, size, and scope to offer reasonable assurance that it will succeed in meeting the problems incident to implementation of the applicant's desegregation plan.

(b) An application must provide assurance that Federal funds made available for any fiscal year will be used so as to supplement and increase the level of funds that would, in the absence of such Federal funds, be available to the applicant from non-Federal sources for purposes which meet the requirements of this authorization, and in no case as to supplant such funds from non-Federal sources.

(c) Sponsors of projects will be expected to demonstrate that provision has been made for minority groups, parents, members of the community and others at interest to participate in an organized way in the development, review and evaluation of the project.

(NOTE.—These draft criteria are being considered for purposes of administering the special $150 million appropriation requested and are subject to change. They have not yet been reviewed by all who might be able to contribute ideas and useful suggestions. They do not represent the same criteria, in whole or in part, that may be developed to implement the Emergency School Aid Act of 1970 or similar legislation now under consideration by the Congress.)

(d) In the case of sponsorship by public or private community or civic organizations other than an LEA, a project will be funded only when it is clearly in support of the LEA plan.

II. Funds may be used for activities that maintain and improve the quality of education during the desegregation process. Examples of such activities are the following:

1. Special educational personnel and student programs:

(a) Special personnel:

Temporary teachers—to provide release time for regular instructional personnel to participate in desegregation workshop activities.

Teacher aides—to reduce pupil-teacher ratios in order to give more attention to individual students.

Special guidance and counseling and testing staff—to assist and counsel principals, teachers, and students in order to provide educational programs that will remedy student deficiencies.

Monitors—parents in the school community to perform services that will reduce potential behavioral problems on school buses and school grounds.

Crossing guards—to provide staff that will maximize safety precautions for children who may be taking new and different routes to school.

Administrative and clerical staff—to provide additional personnel and time for implementation of desegregation plans, e.g., additional month of employment during the summer for principals.

(b) Student services:

Remedial programs—to provide specialists, books and supplies for remediation in all subject areas in which students are deficient.

Guidance and counseling—to provide adequate guidance and counseling staff in order to deal with student adjustment problems resulting from the desegregation process.

Diagnostic evaluation and testing programs—to provide diagnosticians trained to evaluate special sight, hearing and psychological problems of students.

Work-study programs—to provide children from poverty level families with specially-designed school programs that would afford them financial assistance so as to continue their education.

Health and nutrition services—to provide specialized personnel and services for students having health and nutrition deficiencies.

Dropout prevention programs.

Student relations—to provide special programs designed to assist students on problems such as acceptance, behavior, dress codes, etc.

(c) Educational personnel development:

Seminars on problems incident to desegregation—to provide training with skills experts in the area of human relations so as to minimize problems incident to desegregation.

Seminars on teacher interpersonal relationships—to facilitate positive interpersonal relations among educational personnel through training by skilled professionals in an intercultural understanding.

Utilization of university expertise through institutes and inservice programs to deal with such problems as:

Teaching bilingual children

Teaching children with speech and dialect deficiencies.

Attitudes and problems of teachers, parents and students involved in the desegregation process

Upgrading basic skills and instructional methodologies of teachers in English, math, science, social sciences, language, arts, reading, etc.

(d) Curriculum development:

Utilization of expert consultants to shape and design new curricula approaches and to introduce curriculum innovations that would serve children with multi-ethnic backgrounds.

New and varied instructional materials.

Improved evaluation and assessment of student progress.

(e) Special demonstration projects:

Projects for introduction of innovative instructional methodologies which will improve the quality of education in the desegregated school:

Individualized instruction.

Master teachers.

Team teaching.

Non-graded programs.

Special projects involving community agencies and parents—to develop joint projects between special-interest and civic groups, parents and the schools which would promote understanding among citizens. Such projects could include sponsoring citywide and countywide art and music festivals, public meetings on relevant school problems (drug abuse, behavior, etc.).

Exemplary instructional practices—to operate pilot projects which would demonstrate exemplary instructional practices suitable for systemwide replication and for other school districts involved in the desegregation process.

(f) State and local planning and administration:

Expand technical assistance capabilities at the State education agency level—to provide additional personnel to assist the local education agency in planning for desegregation.

Temporary staff at the local level to handle administrative details and clerical duties—to provide additional temporary staff to deal with the logistics of changing from a dual to a unitary system. For example, rescheduling of students and teachers, redrawing transportation routes, supervision of necessary physical changes (moving equipment, building renovation, etc.).

Staff at the local level for planning and supervising the implementation of the desegregation plan.

2. Community participation programs:

(a) Public information activities:

Community information programs for parents, teachers, and students—to provide factual information about the desegregation plan and school programs.

(b) Community programs:

School-home visitation programs—an activity to be performed by educational personnel to assist with dissemination of information about school programs and student progress in the desegregated school.

Special parent programs—to provide programs designed to increase parents' involvement with the schools' programs, i.e., PTA, Education Emphasis Week, etc.

3. Equipment and minor remodeling:

Procurement and relocation of temporary classrooms (trailers, mobile facilities and demountables).

Procurement and relocation of equipment and classroom furniture, including replacement of obsolete items.

Minor building renovation and remodeling for general upgrading of a facility.

DIALECT DEFICIENCIES

Senator **Pell**. The points which you mentioned in your testimony, are quite valid. I think one of the most important instances is dialect deficiencies. As long as we have one language spoken by the predominance of white people and another language spoken by most of the nonwhite people, we are going to have a kind of segregation or isolation that will continue to exist.

I can't imagine anything that would be more important.

As far as the 1-month salaries for school principals is concerned, I might be a little bit skeptical on that.

DOUBLE COUNTING—GOOD FAITH

With regard to the double counting, does the information developed by your Commission indicate to you that, up to the present recalcitrant districts, will make a good-faith effort to implement this bill?

I realize this is a subjective question.

Mr. **Glickstein**. It is very subjective, Mr. Chairman. I feel that we must eliminate segregated schooling as quickly as possible.

Even if it proves that $1.5 billion has been wasted and we haven't achieved this result, there are hundreds and hundreds of other activities in which we have wasted billions without achieving results. I think that money is needed.

There are school districts in the South that have benefited from this money. The climate in the South, I believe, is changing.

I think just a few weeks ago you and I, on the same day, were in Jackson, Miss. I have been in that same city 10 years ago and it is phenomenal how the atmosphere in that city has changed, how particularly the Voting Rights Act has given political power to black citizens.

I think we cannot say that the conditions in 1970 are identical to those in 1965, 1960 or 1957.

I would be prepared to try and see and hope that this act would be administered in a way that this problem, once and for all, will be out of the way.

Senator **Pell**. I would like to revert for a moment to the Commission, of which you are the executive director. I think you should submit for the record not only the fact that Father Hesburgh is the Chairman, but also a listing of the members of the Commission.

(The information subsequently supplied follows:)

MEMBERSHIP OF U.S. COMMISSION ON CIVIL RIGHTS

Rev. Theodore M. Hesburgh, Indiana, Chairman.
Stephen Horn, Washington, D.C.
Mrs. Frankie Muse Freeman, Maryland.
Dr. Hector P. Garcia, Texas.
Maurice B. Mitchell, Colorado.
Robert S. Rankin, North Carolina.

Senator **Pell**. How big is your staff?

Mr. **Glickstein**. We are authorized a staff of 153, but because of an inadequate budget, at the moment we have about 132.

Senator **Pell**. You are doing much better than the whole field of education which usually gets about one-third of the authorized amount of money, in which case you would have only 50 people.

Mr. **Glickstein**. Most of our money is for salaries. We don't make grants.

Senator **Pell**. I personally would like to see all authorized funds appropriated, but you are doing very well, I think, in comparison with programs with which I am familiar.

Of your personnel, 130, how many of those are what you call professionals and how many are secretaries?

Mr. **Glickstein**. It is approximately 50–50.

Senator **Pell**. And the professionals are all lawyers?

Mr. **Glickstein**. No.

Senator **Pell**. Why not? I have acquired a great regard for lawyers in the civil rights field.

Mr. **Glickstein**. We have social scientists, city planners, psychologists.

The skills needed to deal with urban and civil rights problems go far beyond just legal skills and require knowledge that people from these other disciplines can bring to these activities.

Senator **Pell**. What percentage of your people are black?

Mr. **Glickstein**. It is about 50–50 on that score, also.

Senator **Pell**. Have you any representatives of other ethnic minorities?

Mr. **Glickstein**. My rough recollection is something of this sort: About 45 percent of the staff is white, about 45 percent of the staff is black, and about 10 percent of the staff are Spanish surnamed.

We have Mexican-Americans on the staff, Cuban-Americans and Puerto Rican-Americans.

Senator **Pell**. What about Portuguese surnames who are black?

Mr. **Glickstein**. It is conceivable that some of our black employees are of Portuguese backgrounds, but I am really not certain.

Senator **Pell**. Have you any offices outside of Washington?

Mr. **Glickstein**. We have six small regional offices, one in Los Angeles, one in San Antonio, Atlanta, New York, one that operates out of Washington, and one in Chicago.

Senator **Pell**. My recollection of the authorizing legislation is that you have a 5-year life, is that right?

Mr. **Glickstein**. The last time, when you renewed us in October 1967, we had a 5-year extension, correct.

Senator **Pell**. That is what you had originally, too, I believe.

Mr. **Glickstein**. Orignally, I believe we had a 2-year life. In the Civil Rights Act of 1957, we had a 2-year life.

CITIZEN PARTICIPATION

Senator **Pell**. In the successful models of which you spoke, the common denominator seems to be the effectiveness of the local community involved.

147

Have you any views as to whether the bills before us should be amended to provide for a greater amount of citizen participation?

Mr. GLICKSTEIN. I certainly think that is something that should be required in the guidelines. I think the bill does permit community activities, including public educational efforts in support of the plan, program, project, or other activity under this act.

I believe that is a provision in the bill that deserves good funding and good support. That is very important.

Senator PELL. Do you think that there should be a requirement for community participation or do you think it should be voluntary?

Mr. GLICKSTEIN. I think there should be a requirement that there be discussions within the community, and that people of various points of view in the community have an opportunity to comment on the proposals.

PERFORMANCE CONTRACTS

Senator PELL. Earlier, I was having a discussion with Mr. Lumley on performance contracts. You appeared to be nodding either in agreement or not in agreement. Have you any views on this subject?

Mr. GLICKSTEIN. Of course, Mr. Chairman, I am not an educator. But from what I read about the conditions of our schools in this country, elementary and secondary schools—I think the New York Times News of the Week in Review on Sunday had a long article about a book written by some educators who were critical of how bogged down our school system was—I think those who describe our public school system as a disaster area probably are correct.

I would be willing to try anything to improve education. Performance contracts seem like a very, very worthwhile thing to try.

Father Hesburgh always comments on the fact that in 1960, President Kennedy said we have to get to the moon in 10 years. We got to the moon in less than 10 years. We did that because we were willing to experiment and we were willing to try new things.

I certainly would personally favor something like that and other sorts of experimental programs to improve the quality of education in schools.

Senator PELL. As you gathered, I feel they rate considerable merit. I would like to see them more accepted by the education community, although we can go overboard in that direction, too.

As it is with everything, we try to hit the center. But, as President Nixon said, the center of the road is usually the loneliest portion.

MONDALE AMENDMENTS

There are presently pending on the floor of the Senate amendments offered by Senators Mondale and Javits which will be considered with this bill. I wonder if you would care to comment on these amendments.

Mr. GLICKSTEIN. The amendments, as I read them printed in the Congressional Record, seem very sound to me, and I think are well worth adopting.

Senator PELL. How about including them into the larger authorizing legislation?

Mr. GLICKSTEIN. Yes.

TRANSFER OF ASSETS

Senator **Pell**. Much comment is being heard about the transfer of public assets to private schools.

Do you have any statistical information on the frequency of this activity?

Mr. **Glickstein**. The growth of private segregated schools in the last years has been something very, very great, and the Commission has been very concerned about that over the years.

A number of years ago, in our 1966–67 school report, we urged that the tax-exempt status be withdrawn from such schools, and that contributions to those schools not be tax deductible.

We have pressed this issue over the years. As you probably know, a three-judge court in the District of Columbia here recently enjoined the Department of the Treasury, Internal Revenue Service, from according additional tax exemptions to such private segregated schools in Mississippi. We certainly support that decision.

We hope that is the way it will ultimately turn out. Unfortunately, the Department of Justice is opposing the court's decision. I think that is very poor policy.

There has been a growth of private segregated schools. There has been a diversion of State funds and other benefits to these schools. That should be stopped.

Senator **Pell**. It is interesting, too, from the tax viewpoint, how you handle this problem because some of the greatest advances in integrated schools have been in the private schools in the North.

You would not want to hurt their tax position. They have been out in front in this activity before the public schools were.

Mr. **Glickstein**. I think the court's order in the District of Columbia three-judge court case that I referred to was careful to make certain that it was framed in such a way that it would not hurt the type of schools that you suggest.

Senator **Pell**. Speaking in a very parochial way, you mentioned a report coming out shortly on the experience of Providence, R.I., in desegregation. When will that report be out?

Mr. **Glickstein**. Sometime in the fall, I believe.

Senator **Pell**. I don't want to infringe in any way, but if you have a preliminary draft or anything of that sort, it would certainly be interesting to me.

Mr. **Glickstein**. That certainly would be possible.

TREATMENT OF BLACK TEACHERS

Senator **Pell**. We have heard much about the plight of black teachers in the South upon the advent of desegregation.

This is a question asked of Mr. Lumley earlier. Have you had any experience with regard to these instances?

Mr. **Glickstein**. The Commission has investigated that particular problem somewhat peripherally. I am fairly familiar with the literature in the field, and what other people have done. That is a problem. It has happened. I think safeguards should be taken to insure that that does not happen.

I think that funds under this bill probably could be used to prevent something like that from happening.

Senator PELL. What does happen with the legacy of the past? You perhaps have in some of the Southern schools a level of teaching not up to what it is in the white schools, and you may have the principal of the school who perhaps is not as well trained as a white principal in a white school.

How do you handle that? Is there any way of testing objectively the teaching ability of principals and teachers?

Mr. GLICKSTEIN. I think in those cases, and I am not sure it is as extensive as some people believe, that the black teachers are not up to the white teachers. There is money currently available under legislation to provide for educational programs, and there would be money under this bill to permit those teachers to take the necessary additional courses, brush-up courses, or what have you, to bring them up to the appropriate level.

JENSEN REPORT

Senator PELL. I would be interested in your views of the Jensen Report.

Mr. GLICKSTEIN. I tried to file through Professor Jensen's thesis in the Harvard Educational Review, I think, and my own instinctive feeling—and it is a pretty complicated thesis—is that it is not correct.

I think we have demonstrated over and over again that we can obtain high achievement from people regardless of their race, color, religion, or national origin, if we provide the necessary facilities, resources and environment to do that.

Senator PELL. I think the greatest weakness was the source of the test.

I congratulate you on the specific recommendations for tightening up the legislation. I think it is a little late to be applied to the appropriations legislation that may be passed this afternoon, but we will take them under serious advice for the major share of the program.

Senator JAVITS. Mr. Chairman, may I say that the amendment to be presented will contain the limitations on expenditure which Senator Mondale attempted to put on the legislation. The other matters I am sure we can give consideration to.

Mr. GLICKSTEIN. May I make one further comment?

Senator PELL. Certainly.

NECESSITY OF LEGISLATION

Mr. GLICKSTEIN. You asked the previous witness whether he would support this bill if none of these proposed amendments were added.

My answer to that question is yes.

In 1957, when the first civil rights act since Reconstruction was proposed, a lot of people felt it was weak, it didn't go far enough, that it just touched on voting, and not even significantly. There were people then who said, "Let us not pass this. Nothing is better than this."

But in 1957, Congress acted; in 1960, Congress acted; in 1964, Congress acted, and in 1965, Congress acted.

We are all familiar with the revolution that has occurred, especially since 1965. One million new Negroes are registered to vote. The number of Negro elected officials in the South has gone from less than 50 to over 400 or 500.

I think it is time to start on this and to push ahead, to attempt to deal with this problem once and for all rather than waiting for the millennium.

Senator PELL. I guess it goes to the old phrase of putting the nose of the camel under the tent. It is very important in all of these things to keep moving forward.

But the thing we have to be careful about with this legislation is that it doesn't reward retrogression. This is the concern that I have about it.

If it did reward retrogression and that was its major effect then on balance, I think we shouldn't pass it. These tightening-up measures that Senators Mondale and Javits have offered would mean that it would go ahead, though maybe not as much as we would like. Also, there is a question of tightening up the formulas.

I am a cosponsor of the basic legislation, and I do think we must move.

The subcommittee will recess subject to the call of the Chair.

(Whereupon, at 11:30 a.m., the subcommittee recessed, to reconvene subject to the call of the Chair.)

EMERGENCY SCHOOL AID ACT OF 1970

TUESDAY, JUNE 30, 1970

U.S. SENATE,
SUBCOMMITTEE ON EDUCATION
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senators Pell (presiding), Randolph, Mondale, Javits, and Dominick.

Staff members present: Stephen J. Wexler, counsel; Richard D. Smith, assistant counsel; Roy H. Millenson, minority professional staff member; and William C. Smith, staff director and Leonard P. Strickman, minority professional staff member, the Senate Select Committee on Equal Employment Opportunities.

Senator PELL. The Subcommittee on Education will come to order.

We are continuing our hearing on S. 3883, the Emergency School Aid Act of 1970. The witnesses this morning are Mrs. Marian Wright Edelman of the Washington Research Project Action Council and Miss Frances Sussna, director of the Multi-Culture Institute in San Francisco, Calif.

We will hear first from Mrs. Edelman.

STATEMENT OF MARIAN WRIGHT EDELMAN, WASHINGTON RESEARCH PROJECT ACTION COUNCIL

Senator PELL. I notice you have quite a long statement here. You might care to put it in the record and summarize.

Mrs. EDELMAN. Fine, because it is much too long to read, I think. I will just try to go through in chronological order and pick out the main points that I would like to make this morning.

I am Marian Edelman and I am director of the Washington Research Project which is a group primarily of lawyers engaged in administrative negotiations and research on administrative agency programs and in litigation in order to try to enforce the rights of the poor and minority groups and to insure that Federal programs work on their behalf as they are supposed to. Before that I was with the NAACP legal defense fund in Jackson, Miss., where the main part of our office burden was school desegregation suits.

The issue this morning is Senate 3883, the Emergency School Aid Act of 1970, as it relates to the problems incident to desegregation and racial isolation. I strongly support now, and always have, Federal aid to education, and I strongly support Federal financial aid to quality integrated education. To the extent that this bill stands for these principles, I support it; however, in its present form I oppose it.

This is based primarily on our experience with title I and with what I see as a lack of a defined goal in this drafted legislation, a lack of a well-developed mechanism for review of project applications and dispersal of money, the lack of an established monitoring system with tough sanctions, and the lack of an operational system of evaluation. Unless these things are cleared up with appropriate safeguards written in the bill, I would continue to oppose it.

I think the first point I would like to make is that I don't think any amount of money that this Congress appropriates is a substitute for strong Federal enforcement policies in the school desegregation area. The absence of a strong stance both in word and in deed by this administration in favor of school desegregation, particularly in the South, which follows the mandates of the Supreme Court in title VI of the Civil Rights Act cannot be rectified by money. This Congress can put in $50 billion and it is not going to make any difference in the amount or the quality of integration that can be achieved.

We simply have to have a stronger enforcement policy at the Federal level which means using title VI fund cutoffs to insure the school districts are brought into line. It means the cessation of sympathizing with the recalcitrant districts, it means tolerating no more delays, it means not coming up with any new rules which are going to result in a situation similar to the *Charlotte-Mecklenburg* rule.

Senator **Dominick**. I don't mean to be difficult. I previously supported amendments to various civil rights acts which had the effect of cutting off all funds if they were being administered improperly. I woke up one night at about 1 o'clock in the morning with the sudden thought, What are we accomplishing? How are we aiding education for the kids by cutting off the money by which their education is supplied?

Can you give me a little insight on your feeling on this?

Mrs. **Edelman**. Yes; I think there are short-term and long-term goals. Those districts which are most recalcitrant are usually the very districts that have not taken advantage of all the Federal programs such as Federal school lunch, title I, and other programs designed to help the poor and minorities. On the other hand, we put a premium on desegregated education. Some vehicle must be established to insure that the students in those districts get the advantage of a desegregated education, and the most effective tool to do this is title VI cutoffs.

While I do not favor cutting off just for the sake of cutting off, I believe in the short-term sanction here which will hopefully be followed if we have the kind of policies that I advocate by losses by the Department of Justice to bring these districts into compliance. One of the things I recommend very strongly is apportioning this money in this bill and that it be set aside for——

Senator **Dominick**. That is all very good in theory but we are dealing with kids who are trying to get an education. Now if you cut off the money, how are you helping the kids?

Mrs. **Edelman**. In the short term you are not but on the whole, Senator, my point is the districts.

Senator Dominick. I am worried about the kids.

Mrs. Edelman. I am worried about the kids, too, taking full advantage of Federal programs across the board. The only way through our experience we have shown that you can bring those districts into compliance and make those districts willing to do more for kids is to use Federal sanctions. For every district that decided to stay out of compliance with title VI many more districts were brought into compliance which has provided greater help for those children.

What I am saying is in order to make sure those children don't suffer very long when the administrative process results in title VI cutoffs, if the Justice Department were to go in promptly as they have authority to go in under the Civil Rights Act of 1964, then it would accomplish both goals. I think what we have to do is not only put just a premium on keeping money going regardless of how it is being used because those districts are the ones that use the money least well for the children we are concerned about, but to make sure that those kids get the advantage of programs through a desegregated education which can come through on the use of administrative process and through use of the Justice Department powers. I think we should have them both.

Unfortunately, what has resulted is that in many instances there are approximately 200 districts in various States that have remained out of compliance for a number of years. One of my recommendations in this act is we should not let them continue not to comply because they are hurting children, and that we should through this money provide for some new system, court appointed counsel or counsel fees, so these people in these noncomplying districts can get the advantage of a desegregated education under the law. That is one of the things I would like to discuss in some detail later.

We are asking these children to suffer a little bit in order to get a greater benefit later. On the whole the districts that are getting these cutoffs are the very ones that have been doing the least for the children anyway. I think we have to use a nasty thing in order to achieve a greater good later on.

The other kinds of things I would like to see this administration doing which it is not doing is for goodness sakes not coming up with any new rules that are going to result in any new delays such as the rule of reasonableness which is the case in *Charlotte-Mecklenburg*. The administrative standard being applied under title VI is being affected by this decision. I question strongly whether anything is reasonable after 16 years which may result in the denial or delay of constitutional rights to black schoolchildren.

I am happy to see that the Federal Government has now come down against tax exemption for children who attend private schools in various States. I hope that position will continue.

I hope the Justice Department will act more vigorously in seeking more appropriations to bring more suits against those districts that Senator Dominick is concerned with and I am concerned with and which have been out of compliance for years. In many districts there are thousands and thousands of children not getting the benefit of desegregated education and the other Federal programs that were intended for them.

As for the bill itself, there are a lot of us who are extremely skeptical about the bill as it is written and we have very real questions of whether it is going to achieve the kinds of ends that we think it ought to achieve. One of the big problems is we don't see how it is specifically related to achieving desegregation as opposed to being more of a general Federal and to education program.

Now going to the specifics of the bill I turn to page 4 and discuss the problems with the allotments among States. One of the problems I raise is whether or not the Congress wants to set out an allotment which discriminates against those districts who may have taken voluntary actions to desegregate and reward those districts that have been the longest in desegregating. Under the double counting allotment formula here, this is precisely the kind of result you will achieve.

The second basis for that allotment stems from those districts which have been under Federal court order or title 6 proceedings which again will serve to exclude those districts who did not have to be dragged into court, did not have to go through the administrative proceedings, and to punish those districts who have gone about desegregation on their own and who have need for Federal desegregation money. Also as I read the bill as it is currently written, State court order will not be eligible so that a number of large northern urban districts will be punished by not being able to be double counted under this legislation.

I think that the Congress should rethink whether this is the kind of priority it wants to draw in determining how money will be spent and whether or not the priority ought to be given to southern school districts that have been waiting and dragging their feet until 1968, 1969, and 1970 and make them the ones who are going to be eligible for the most money under this bill.

My bigger problem is the one of eligibility for financial assistance. Just mentioning first a very small problem, I see that they have a cutoff here in the act of 10,000 minority children as one of the criteria for districts which will be eligible. I question this figure and I tend to believe personally that districts with only 10,000 minority children can integrate without very much difficulty and it is those districts with much larger black populations that are going to need the most help in reorganizing.

Now determining which districts are eligible for aid is the most important area in making this act truly effective. Given the degree of widespread discrimination which we have witnessed in supposedly integrated schools and desegregating school districts, the vagueness and glaring omissions of section 5 lead me to conclude that this act may well be a political sop, for southern school districts especially, to spend freely however they desire.

I would like to pose a question. Are districts eligible to buy portable classrooms to put on white campuses when structurally sound and often newer black schools are available for use, or to institute sophisticated tracking systems based on biased standardized tests which will result in segregated classrooms, or to plant grass, pour concrete for sidewalks and playgrounds, install fluorescent lighting, and put down linoleum floors in formerly black schools now that white students will be attending them, or to hire new teachers after dismissing and demoting black teachers?

It can be said that such discriminatory acts violate title VI of the Civil Rights Act of 1964, and therefore, are automatically conditions rendering districts engaging in them ineligible for any Federal funds. However, this is not really clear in the current legislation or under any guidelines that we have seen in the process of being written.

The Department of HEW has never initiated fund termination proceedings against any school districts for closing usable black schools or for firing black teachers, and the Department of Justice has intervened and reopened few, if any, court cases where districts are segregating students within individual schools. Elimination of these types of degrading and discriminatory actions—more so than fancy, undefined, new services—is the key to real, successful desegregation.

In order to make sure that funds are not directed into these types of situations, minimal criteria should be drafted which would spell out which districts would be eligible for funds and which not, to insure that priority will be given to those districts who will use it best based on a record of decent effort toward desegregation and to discourage recalcitrant districts from submitting applications. It would be most desirable if some of these criteria were drafted right into the legislation, but at a minimum, detailed guidelines should be developed. These guidelines should exclude from funding:

1. Those school districts still operating under freedom of choice plans;
2. Those school districts with unupdated court order plans or districts with final court orders still subject to appeals by plaintiffs. The final court orders can mean anything, and I would exclude those districts which have not been brought up to full compliance.

MINIMAL CRITERIA

Senator Dominick. Mrs. Edelman, may I interrupt again?

Mrs. Edelman. Yes, sir.

Senator Dominick. On page 7 of your statement you say:

> Minimal criteria should be drafted which would spell out which districts would be eligible for funds and which not, to insure that priority will be given to those districts who will use it best based on a record of decent effort toward desegregation and to discourage recalcitrant districts from submitting applications.

Once again I must ask, are we really getting at the problem with this approach? Are we helping the children? Where are these districts located?

Mrs. Edelman. There are many, many districts primarily, the ones I am talking about.

Senator Dominick. Whereabouts, in the North?

Mrs. Edelman. In the South. If you want it, Senator, I can provide for the committee those districts which I think are guilty of the practices I would render ineligible.

Senator Dominick. I was thinking of the converts. Which are the districts which will use the funds to the best advantage?

Mrs. Edelman. I think we could find that out by simply looking at HEW records which I hope they are good enough to show us where the districts are committing the practices which I say should not be tolerated here.

Senator Dominick. Which districts would you assume those to be?

Mrs. Edelman. Providence, R.I., would be one. Some parts of Massachusetts would be one where there has been a decent area. There are other northern, western areas such as Berkeley, Calif. But there are even some in Mississippi. There are some districts throughout each State that have made real efforts to comply, and I think we can define those from the records and we can delineate those districts that are guilty.

Senator Dominick. So what you do is award those?

Mrs. Edelman. We award those and give them priority.

Senator Dominick. What do you do with the ones that are really having problems?

Mrs. Edelman. Set up very stringent standards. If enough money is appropriated in this act as it is presently written, and I think enough will, this would be sufficient for them to do away with the kinds of practices we feel that should not be rewarded. If you say these 10 things are going to be the preconditions for your getting money, I think a lot of them would do it automatically to get this money. I think there is enough money involved here that if there is strong enforcement policies it will help bring them into line.

I think a lot of districts would think this is going to be another free ride where they won't have to do very much and will either be discouraged if the chances are they are not going to be able to use this money in the same old way, not going to result in desegregation, or they will try to conform. I think that means we will bring about a higher standard in the desegregation area.

Senator Dominick. But I thought you testified earlier that any money given to these districts is a waste of time.

Mrs. Edelman. Unless there are safeguards, unless there is monitoring and unless there is evaluation. What I am saying is we need to distinguish between the districts and hopefully set up enough standards where those districts who have wasted money and are likely to waste money will not be automatically funded. In the past we have done sufficient studies of title I and title VI to know or have a pretty good idea of which districts they are. At least set up strong Federal standards so you cannot lose still more Federal money in those districts who have not used it well in the past and which are dragging their feet under title VI. They should not be discouraged and prodded to come in with better plans in order to get the money and to use it better.

Those districts that say we cannot meet these criteria are not complying very well anyway. Why should we give them money to go on the same bad way?

Senator Dominick. Go ahead.

Mrs. Edelman. Continuing on the districts that I would sort out and make ineligible at this point for Federal school desegregation money—and I would remind you that this is desegregation money:

School districts where State and local fund allocations or mileage have been lowered in the last 2 years. I am pleased to see that the Senate did pass the Mondale-Javits amendment which came out against the granting money where this has occurred.

I would come out against giving money to school districts negotiating long-term teacher contracts with provisions that if a teacher is assigned to a school in which she does not want to work, she may quit and work elsewhere and still receive her salary. This has been something that has been instituted in a few southern school districts in the South which has resulted in Federal financial support to private schools. Again I am pleased to see that the Senate passed the amendment which went against this aid to private schools. This is one of the things I would specify.

I would not give money in States which permit tax deductions to private school attendees. Now this has been made more easy, I think, by the change in the Federal policy in shifting its view on tax exemption for private segregated academies.

I would not give money to school districts who transfer or sell equipment to private schools. One of the things I would like to see is a full-fledged investigation of the extent of the use of Federal and State money for aid to private schools.

I would not give money to school districts in which there have been firings and demotions of black teachers and administrators, or which have imposed new teacher qualifications not heretofore required that have the result of forcing many black teachers out of the system.

NEA has done some studies of the lessening ratios of black teachers and administrators in the southern school districts and we are already beginning to get complaints about the number of firings and demotions of black school teachers and principals in Mississippi for the coming year with estimates as high as 55 percent of black teachers and administrators who are being forced out of the school system for this coming September in places like Starkville.

Another thing Mississippi has done or has threatened to do in some school districts is require examinations of black teachers and require in many instances that black teachers receive a score so high that it exceeds the required score for admission into every educational school in the State of Mississippi. It seems to me we should not tolerate these kinds of shifts in rules lessening the number of black teachers in the school system.

I would exclude—which I am sure Senator Dominick will not be pleased with—those school districts that have refused and/or failed to take advantage of Federal programs designed to help the poor and minorities such as school lunch, title I, and so forth.

I think if they have not bothered or have not cared enough about the children in their system to apply for and take advantage of this money that would help their students that they are unlikely to use this money well.

I would not let school districts have money that are maintaining segregated classes within schools, and there are a number of these across the South.

I would not give money to school districts which instituted new procedures which have the effect of resegregating pupils. There are a number of these which have been brought about mainly through testing and tracking. One of the ways in which I would redraw this act very carefully is to define what we mean when we say authorized remedial programs.

While we may favor remedial help, unless we specify very, very clearly what we mean by this and try to do it in such a way that will not result in resegregation, we are going to achieve exactly the opposite purposes of this act as I read it now.

I would not give money to school districts where there is student unrest and where a number of black students have been expelled for defending their rights and have been denied a just and fair hearing procedure.

I would not give school districts money that have in the past elected to choose sites for new school construction to perpetuate segregation.

I would not give money to school districts which have closed down acceptable black schools rather than send white pupils to them.

Senator DOMINICK. Who is going to determine whether the sites have been chosen to perpetuate segregation?

Mrs. EDELMAN. I would hope, Senator, that the Office of Education has sufficient data to determine that. In those cases which I handled in Mississippi it was fairly clear from the reading of the plan, if you were familiar with that school district, alternative available school construction sites.

Senator DOMINICK. But we are not dealing with just Mississippi or Alabama or Louisiana, we are dealing with Colorado and New York and Rhode Island and Maine and Minnesota and many other States.

In Colorado we have, and I am very happy to have been one of the authors, one of the strongest fair housing laws that there is in the country. As soon as it became effective and the people understood that they could live wherever they wanted to, they moved into a very, very fine area outside our airport called the Park Hills School District.

The blacks moved into Park Hills in large numbers, becoming the majority race in the school district. And although the Park Hills schools were some of the best in Denver. Some education authorities began to complain about these essentially black schools and suggest busing the students to achieve a good racial mix. Quite naturally the black families opposed this as one of the reasons they moved to Park Hills was because of their excellent schools.

This is a voluntary pattern of living. Do you simply say that where you have a voluntary pattern of living you must bus your kids to achieve a racial mix regardless of the situation?

Mrs. EDELMAN. Let me talk about several kinds of situations where I think my requirements, including the last one, clearly cover those southern school districts which have been under title VI or which have been under court order plans. There has been very little difficulty in ordering this when site selection has been made in such a segregationist manner.

Second, in those districts where you don't have voluntary housing patterns, and I would still say, Senator, that is probably a majority of the districts in the United States because there are very few locations where this has really been enforced and that is another whole subject for discussion.

Senator DOMINICK. Not even strongly enough in our State.

Mrs. EDLEMAN. I know. So on the whole what you are talking about is probably an exception. On the whole there are pretty glaring situations where we know the school district has built inside the Negro ghetto. We make certain judgments about whether or not the school board is acting in good faith.

Senator DOMINICK. Who is "we"?

Mrs. EDELMAN. We, the Office of Education; community groups. It is time the Office of Education begin to do studies and evaluation of northern school districts to evaluate what trends there are in many of the areas we have outlined there.

Senator **Dominick**. What you are really saying, is it not, is that the Federal Office of Education and HEW should take over the school systems in a number of States?

Mrs. **Edelman**. No, sir; not at all. I am just simply saying they should know enough about school systems, know enough about the kinds of practices that are not going to result in desegregation to make certain standards by which they will decide how Federal money will be spent.

We are not asking them to run the schools, we are just saying let's insure that Federal school money is used to promote desegregation, not just the opposite.

We have had enough experience, Senator, with title I and with the whole ESEA appropriations which shows how northern and urban and southern school districts have misused this money. All we are saying is we should not continue to find misuse of Federal money this way. If the Federal Government is going to give away still more money in the large chunk that you are talking about in this act, and if you are saying we want to use this money to achieve segregation, then you must set up standards which will result in this money being used in the way you say it is to be used. It is simply saying if you are going to use Federal money, let's use it correctly and conform with the 14th amendment. I would not think any school district would want to object to that if they really want to help the children in good faith.

Senator **Dominick**. I don't think many of them do object to that, but their interpretation of what amounts to a compliance may be different from yours or mine.

Mrs. **Edelman**. Why can't we then simply say these are things that the Federal Government cares about such as site selection and we would like for you to be mindful of these when you are doing them and we are going to be looking at this? I think that is going to make school districts who have been acting unthinkingly in the past and those willfully placing schools in order to desegregate, to rethink this issue.

Senator **Dominick**. This would mean any school board anywhere would have to have their program reviewed by HEW before they can begin construction.

Mrs. **Edelman**. Not necessarily. I would hope there would be periodic reviews and monitoring and an evaluation of the use of this money from time to time. HEW would look at how the school system is proceeding, looking at what the end result would be. You know, in 1 year or 2 years that district is achieving more desegregation. One of the things I would like to see as a result of this is that they decide whether or not to continue pouring money into the district, whether it is a good practice and whether that district is coming out with the kinds of decisions both in construction and everything else which result in more desegregation rather than less. If they find it is less, then they should look carefully at that district's practices and find whether or not they are going to spend more Federal money there.

What we are trying to do is come up with results. What we are doing is making some guesses—better than guesses, setting up some criteria of what is likely to result in better results. I think we have to look at those districts and say this is a district that we ought to put a lot more money into.

These 14 things are the kinds of things I would like in the act or would like to have in the guidelines as standards for dispersing Federal desegregation money. We will put the money where we think we will have the best chance of achieving results.

One of the glaring omissions in this act is the lack of any strong monitoring requirements or mechanism. I think one of the things we should have learned from the past is there is a great need for an effective monitoring effort so that we can know at all times how the money is being spent, whether it is achieving its purposes and where it is not and to have strong action taken to discontinue the use of money and illegal waste.

Now I refer you again to part of the experience with title I of the ESEA. One of the things I raise with the administration officials is why is it we want to spend another big chunk of money without having any evaluations of existing programs that in many ways this program will tend to duplicate? Why have we not done an evaluation or completed our evaluation to make sure we don't make the same mistakes?

Why don't we do an evaluation of teacher training under the Education Professions Development Act and see if what we are proposing here will not be duplicative or will make a difference in specifically achieving desegregation? Why don't we do an evaluation of title IV first which is very similar to this legislation to see in what ways money has been used well in title IV, what has worked and what has not?

Without understanding how our other programs have worked, why indeed should we spend a lot more money in this bill to do the very things other education acts were intended to do? How can we make this bill something that is specifically geared to desegregation rather than continuation or overlap of these other bills? I have not really received adequate answers to that.

One of the other issues that bothers me is lack of a clear administering vehicle in HEW or elsewhere that is going to administer this money. I draw attention to the $150 million. I feel strongly that in the absence of a clear administrative structure with a vehicle worked out for approval of the project application, with deadlines, with adequate personnel assured, we cannot use $150 million well between now and September 30 which is when I am informed they intend to obligate all that money. I would question this in the absence of a clear administrative structure and I would advocate that a new vehicle be created to administer this money so that we don't duplicate the mistakes of other agencies.

We are sort of going to go down the same old path with this money. I would hope that we can somehow prevail upon people to take enough time to establish good enough priorities, to get sufficient personnel, to set up sufficient criteria to administer well this $150 million.

Now we also urge that the Senators not be in such a great hurry to appropriate the $1.35 billion until we see how the $150 million has been spent to see that we are getting on the right track to desegregation.

Senator **Dominick**. Who is "we"?

Mrs. **Edelman**. We the country, we the Federal Government, "we" is all of us who favor money for desegregation. We should wait and see how the $150 million is spent. This Congress and HEW should do a very careful monitoring job of the $150 million and we should look at the results of that first before we appropriate still another huge chunk to make sure that we are not going to spend any large sum of money in ways that are not going to make a difference, in ways that are shown not to work.

One of the things I would advocate is that we divide up money in very specific ways. I don't get a sense of how the HEW officials or very frankly anybody, Senator, how they really intend to use this $150 million. They don't have carefully drawn priorities, they don't have carefully drawn safeguards, and I am afraid it is going to be a waste unless we take the time to revise these things and get a clearer administrative agency who can conduct this program.

I am told that title IV is going to be the administering vehicle for this money. I have very real questions about this, about either the capacity to run it in light of the shortage of personnel or in light of their structure. It is rather cumbersome with regional and State centers. I have questions whether they are able to take on the whole burden—they are operating under a budget of $13 million now—of a budget of $150 million and to get rid of it well between now and September 30.

I question what kind of judgments they can make about spending this money in ways different from the current title IV program, in the South. The attitude of the black community toward title IV is not very friendly because they felt that title IV people have not been understanding or sympathetic to their aims and their goals and their aspirations. On the whole they accuse title IV of being extremely conservative in many instances and they would not like to see still more money go into this vehicle. They think that title IV has not worked well in the desegregation fight and they would resent more money being spent through it.

I tend to accept the views of the black community on title IV. I ask that we take time before we decide to give all this money to title IV and study and evaluate it. I know that there has been a study conducted by the Southern Education Foundation which I think people should read and I understand the Commission on Civil Rights is in the process of doing a thorough study of title IV now.

Before we make a decision that all this new money is to go to title IV, why don't we just see through these studies and see how good it has been, and whether it is the proper vehicle for administration of this new money. Right now my position is that I would favor creating a new unit in HEW which would be directly responsible to the Secretary which would have new personnel who would administer this money and hopefully administer it in a different and better way.

One of the other questions which concerns the black community is where the money is coming from. We have asked a lot of people this question and have gotten a lot of different answers. We are concerned that it not come out of other programs intended for the poor. I don't think that poor children should have to choose between decent housing or food or a poverty program or decent schooling. I would like some

162

clarification where the money is going to come from, both the $150 million and the $1.35 billion. I think the people should have that question cleared up.

In the absence of understanding where this money is going to come from, we express a great deal of skepticism about cutbacks to other programs and whether or not we would be in favor of cutting back on other programs in order to give money to this.

One of the other things that I would build into this act which does not now exist is a strong community participation section and a strong student participation section. Talking with black students throughout the South it has been very interesting to note that those school districts that had the foresight to create racially integrated student committees, to help implement desegregation plans have had much less trouble than those districts without them. Student committees have been able to work out many of the things that cause the worst problems in desegregation, things that we may not think are important which students do—things like school names, school mascots, school colors, homecoming elections, student government elections, et cetera.

Where there have been student committees, students have been able to sit down before the desegregation plan has been implemented and work out ways to resolve these things. In Athens, Ga., it has resulted in taking one color from each high school, the previously black and white. This meant the election of each of their respective student bodies officers who rotate in the integrated school during the next year. This meant taking the one name of each previously segregated school for the integrated schools and deciding upon a new school mascot.

These are the issues that have caused the most confusion and the most resentment on the part of black students that are welcomed into a white school. They insist on their own identity and when it has not been respected, they resent this. I would like to urge that a basic policy should be that student committees be created in all desegregating districts. I would hope that in the spending of this money that at least the guidelines would reflect a value to involve students more in the desegregation planning process because after all they are the consumers and they are the ones who the desegregation plans are going to affect most.

Second, I put in a strong plea for and would urge that private nonprofit groups be allowed funding under this act. In 1964 when the Jackson, Miss., schools were beginning desegregation we would not have really made it in large part without violence or with continuing white or black support of the public schools had it not been for a large group of white mothers who started a movement to support the public schools and to keep the public schools open and provided the community with information and provided talks in the local communities and tried to tell black and white parents that their fears were in large part unfounded, and they did a marvelous job in the whole period of desegregation.

I think there are a lot of groups like that, white parents, who should be allowed support under this act. There are also many, many black groups working in the school desegregation area that ought to be supported. These groups could have specific functions. Many of them know now better than the Office of Education how Federal programs are working at the local level because they study and pay attention to what the school districts are doing. I think they should have a role in how Federal money is being spent and in deciding what is going to be done at the community level and in monitoring and evaluating local school district programs.

I think that each school group or each school district should be compelled as a precondition of getting money under this act to establish a biracial community committee which would be involved in helping them plan programs, in the application process and in drawing priorities and in the whole program for spending Federal money. I would use money under this act to give them staff so that they can really be intelligent. This is not a new thing, title I provides it. It simply has not been enforced.

Now many southern courts are seeing that this is a useful vehicle and creating biracial committees to help administer the school desegregation plan that we do have clear precedents for community committees. I think it helps create an awareness of what the school district is doing, I think it helps the school district became more responsive and responsible about how money should be spent. The committees should be chosen by the communities and by school officials.

As to the authorized activities, under this act, I give great details on some pages of my statement about why I think they are bad. In many ways they don't differ in any way from title I or other education acts. Again if we are talking about a desegregation bill here, let's limit what money can be spent on those things which are really related to desegregation. We don't need a lot of staff in desegregation, we don't need a lot of money in desegregation, and there are very few things that I think would make it work better. I would urge that you look at the specifics I have outlined in my prepared statement and hopefully limit ourselves to that so that we don't find ourselves a funding general aid.

I would again urge that we tighten up remedial program requirements. I would hope rather than having the remedial program during the school day that perhaps again we try to encourage groups, black colleges and others, to engage in after school remedial programs or special tutoring programs not resulting in separation of children during the school day in the schools. One thing we should pay for is tutors, but I don't think children should be tracked into segregated classrooms.

We need better guidance counselors in primarily white schools as well as to provide black history professors because one of the most sensitive things is that black students don't feel they are being respected. The white school is a one-way mechanism that rejects black identity and black interests. Black students are now insisting that if they are going to go to an integrated school that it be truly integrated and that they be allowed to participate fully.

There is a great need for teachers of black history, culture, art, etc. I think white children need black history and black culture and black art, as well and this is one of the things I think should be financed under this act. In terms of general teacher training, general hiring of staff, general remedial programs, these should not be allowed. I urge that we look at this legislation again; let's redraft it and spell out what we mean by these things or they are going to be subject to a great deal of waste.

I would urge strongly that we not spend any more money for school construction unless we specify the kinds of school construction; that it result in more desegregation—$150 billion for educational park experiments or for creation of new "magnet" schools in the ghettos to see whether if they are really good enough and have extra quality programs, they will attract whites into the inner-city.

But in the absence of this I think we should not give more money to general school construction, Southern schools in particular built enough things under title I. I think again that I can't think of very much school construction that has anything to do with desegregation. If this is a desegregation bill, then I think we should cut it out or specify carefully what school construction is permissible.

There is nowhere in this authorized activity section permission for construction. But the bill does not prohibit it. I think the legislative history should be clear about this. I happen to be one who opposes mobile classrooms. Many Southern districts have closed down adequate black school structures and added mobile structures to white schools, and the black community didn't like that very well and I don't blame them. Again they bought enough mobile classrooms under title I not to have to use this money also to buy still more mobile classrooms.

I would urge you to reconsider that and think very specifically what has this got to do with desegregation? I would submit that the renovation section, the mobile classroom section, and any school construction has very little to do with degsegregation and I urge that they be outlawed. If they need that money, let them get it out of State and local funds or out of other Federal programs that permit them to do this.

I would do the same thing for alterations and remodeling. I don't see what remodeling or alteration has to do with desegregation. I would support more community activities under this act, but again I think they should be spelled out and I think we should encourage as many nonprofit groups as possible to participate in this.

I wish that the Senate would make some more specific inquiry so that we can have some more idea, particularly before we appropriate $1.35 billion, about what the administering agency is going to be, what the priorities that are going to be drawn are, who is drafting what kinds of guidelines and what kind of safeguards.

I think one of the things that we saw in title I and other education programs is that State education agencies have not adequately performed their roles and have created an extra tier of bureaucracy. I would like to know what the State's role is going to be under this act. What happens when a State comes in with bad applications? Again unless we have clear and strongly drawn priorities, what is going to happen?

What is the Secretary going to use as the basis for judgment in turning down the money requests from States for projects that may not be very good? In fact, does the Secretary have the authority to reallocate money if he is not pleased with the projects or the results?

If districts in a State fail to meet the time deadline, say September 30, for the $150 million, in submitting applications, is the Secretary under this act given permission to reallocate the money to which that State would be entitled to other States that have submitted good applications?

Then again I would just like to ask that the administration and the Senators bear in mind the need for some evaluation to try to assure that the money under this act will avoid many of the mistakes of the past in these other programs.

I think basically my position is that there is very little money that is needed in the desegration process at this point. There is a great deal of money that is needed in achieving quality education and we don't draw sufficient distinction in this bill between the one and the other. Again that comes out of my basic recommendation that we use the $150 million very carefully and determine what will or will not work in desegregating before the large money is spent. A priority on enforcement should be drawn by funding through the courts a new procedure whereby lawyers in the districts that are not in compliance and have been in noncompliance for years would be allowed funding under this act to bring lawsuits to bring those districts into compliance because I think we can somehow beef up the enforcement mechanism.

I would urge that a large chunk of the $150 million be used in this regard by lawyers in the districts that have been in noncompliance to bring about desegregation because if we did this, it would result in many tens of thousands of children achieving a desegregated education and becoming eligible for funds that they are not now getting which I think would be a very, very good thing to accomplish under this act.

Second, I would use the $150 million to put in a few new concentrated experimental programs in urban areas to see what will work, such as educational parks and magnet schools, such as full service community schools, to see how and by what means we may use the larger amount of money in 6 months or a year in ways that will work.

We have an idea of what won't work. We have an idea of the same kinds of old programs and the same kinds of old poor results. Why not take the opportunity to use this $150 million or some portion of it to try real education experiments to see if northern urban districts won't try interdistrict funding and come up with new kinds of joint mechanisms to achieve desegregation if sufficient incentive to bring about desegregation is built in.

Lastly, I would hope that we would provide in this act a strong public information requirement so that everybody can be aware of what is going on in school districts, what kind of program planning is going on, and to have an adequate opportunity for input.

Finally, in terms of how the $150 million might be used, I would urge that we test out Dr. Coleman's theories on multisite and multipurpose education. I don't know if they will work. I am afraid in many instances his thought of having everybody go to one spot for art or culture may become an excuse not to fully desegregate a system. I would like to see whether or not it has value. I would like to see whether bringing all students together 1 day a week or whatever would make any difference in the children's achievements. I have my doubts, but since this is one of the theories why not see if it has value.

I think that that would be a viable use to which the $150 million could be spent. I would urge again that before we put $1.35 billion into more Federal education that is intended for desegregation that we take time to give sufficient evaluations and to do sufficient experiments to see what will work so that we can hopefully use this money in the best way possible.

Senator **Pell**. Thank you very much, Mrs. Edelman.

I would like to read into the record a statement from Senator Javits who is the ranking minority member of the full committee.

> I am necessarily engaged this morning before the Executive Reorganization Subcommittee of the Government Operations Committee considering the Consumers Agency Bill. I welcome the most careful scrutiny of the Administration's bill by a lawyer I respect so highly as Marian Wright Edelman.
>
> I hope I will have the opportunity to study her testimony in detail and propound written questions and ask for written answers which may be included in the record. I assure Mrs. Edelman that I will consider her views most carefully, as I have such great respect for her as a civil rights lawyer.

Would you be willing to answer in written form any questions that Senator Javits would propound to you?

Mrs. **Edelman**. I would be happy to.

Senator **Pell**. I, too, welcome you to this subcommittee. The chairman of the select committee, Senator Mondale, has a very high regard for you and told me that you would have very specific suggestions in connection with this bill; he was correct.

MONDALE AMENDMENT

You are familiar with the three requirements of the so-called Mondale guidelines or amendment?

Mrs. **Edelman**. Yes, sir.

Senator **Pell**. Do you believe that these meet a good many of the points that you have raised?

Mrs. **Edelman**. Basically, Senator, I think as I understood those amendments that they were attempting to get at those things which may not be clearly required in title VI. Many of the administration people have claimed most of the things I am complaining about are things that are prohibited with the exception of the private schools, urban-rural allocations. I think that those amendments are a first step, but they do not cure all the ills.

The point is they are not being enforced in title VI. Why don't we make sure this money is used better by providing specific safeguards? I think there is still a need to be very specific either in the legislation or in the guidelines about the kinds of practices we have outlawed because as I have shown in this testimony which you can read again that the Department of Justice and HEW simply have not taken strong, effective steps to do anything about these practices which are very widespread and result in frustration.

I would just hope again that if this money is specific money that we say is to go to desegregation, that we start off as good as we can start off by having as many safeguards against bad practices as we can. I would urge their inclusion because I don't think the amendments fully do that.

HEW GUIDELINES

Senator Pell. Are you familiar with the tentative guidelines that HEW put out a few weeks ago under the regime of the former Commission of Education?

Mrs. Edelman. Senator, I have seen a number of draft guidelines. I am not sure which set you are referring to. I have seen them, they have all been in draft form that I have been given. I have seen the ones given to Senator Byrd's subcommittee.

Senator Pell. Do you think that they meet a good portion of your requirements?

Mrs. Edelman. Not at all, sir.

Senator Pell. This is the education subcommittee and I have been much criticized because I have not taken as much of a lead as some thought I should have, in integration problems. But I have sought to concentrate on education, black or white, and I am delighted that the select committee has been set up to go into the problems exclusively of segregation and not on education per se, obviously the two mesh together.

We are drawing on the wisdom, knowledge, and findings of the Select Committee as much as we can. However, we in the subcommittee face a bill, we have to weigh its pros and cons and try to get as complete a proposal as possible. And again, we face the fact that this committee is probably of a more liberal tenor than the Senate as a whole.

NECESSITY OF LEGISLATION

We may be left with the alternative of either passing this bill, S. 3883, with Mondale-type amendments or passing it without any amendments. What would you do in my place? Would you support the proposal or would you reject it?

Mrs. Edelman. It is a tough question, Senator. I have thought about it a lot and other civil rights groups have thought about it a lot. Basically I think that you know there are two arguments here. If the issue is whether you think it is politically feasible to put more money into these school districts, assuming that 50 or 60 percent is going to be spent in ways you don't like, would you then still not favor this bill?

I guess I come down "no" because I have seen too often—and I want to leave a copy of this with Senator Dominick and I will send you one of our title I report—an evaluation study where money has not only not been used for the purposes for which it is intended, but it has been used for exactly the opposite purpose, which has hurt us.

If this money is to be used in ways we have experienced and in other education programs in the past, to use against the children we are intending to help, if it is used to resegregate, if it is used to set up tracking programs, it is used to build new segregated schools, it is not going to further desegregation, then I say I would rather not have it unless we can assure as much as we possibly can insure that it is going to be used well.

Senator Pell. Excuse me. I don't mean to cut you off at all, but we have to have a little more specific reaction. As I understand it, you would reject the bill if it was not tightened up as far as you believe it should be?

Mrs. **Edelman.** Not as far as I believe it should be, but I believe there are certain key things that should be built in. One is a strong community component, a strong monitoring component and a strong evaluation component with specific deadlines.

Senator **Pell.** Those three points?

Mrs. **Edelman.** Those three points are some key points.

I also would make sure that the kinds of authorized activities are stressed by being very specific so it does not duplicate other programs.

I would urge that you look seriously at three or four things that I recommend. Money should be spent more valuably in ways in which current programs are not now spending them on. I think we ought to try some educational park experiments, because that will bring about desegregation that is not now existent.

But I would say that the ones I have named are the important ones to which you should give consideration to.

Senator **Pell.** I congratulate you on having a position, because some of your colleagues in the general community just won't take a position on this bill. It has been like pulling teeth to get witnesses to come in and express themselves. I congratulate you on the depth and detail you have studied it.

I well know your excellent reputation, we will take your points into very serious consideration. We value your views.

My own reaction would probably not be the same as yours. If we can do something that has a good deal of good in it, it is probably better than not doing anything at all. Perhaps if we can bring in those three points you have raised specifically and the Mondale amendments, I would think we could get a bill that would, on balance, be one or two steps in the right direction.

Mrs. **Edelman.** The way you phrase it, Senator, I don't disagree with you. You say if the bill could do a great deal of good.

Senator **Pell.** I am saying if we get the three points you raised, which are very valuable, indeed, but as I say, I am not dedicated to it. I have cosponsored the bill with my colleague and friend, Senator Javits, and we have a very open mind on this bill.

If we don't pass the bill at all or if we put in so many restrictions that it will not be passed, I am not sure that will be in the best interests of our young people.

Mrs. **Edelman.** Could I make just two very brief comments in response to that? I have not decided how much should be in legislatively as opposed to how much should be in administration guidelines. I think that, again, you can write in those things which you think are most crucial and encourage the rest through administrative action to the extent possible.

Second, I guess I just simply want to give some justification for all of my colleagues who have been intimidated from or been reticent to come here, give a little explanation. The reason I think people are reticent to come and testify is that I think everybody favors money for desegregation and it is very hard for anybody to come in here and tell you they don't want money for desegregation. We all do.

But everybody also happens to have a substantial amount of distrust in the kind of school desegregation policies this administration has been fostering and it raises the issue whether or not any money under these policies is going to make any difference and is going to help us.

So it is the resolving of this issue that I think has resulted in the delay of many coming forward.

Second, I think that if this committee were to take sufficient time to deliberate and not give people the sense that everything is being rushed through it would help reassure us about the use of this money. So many questions are raised that we would like to just see a little more thoughtfulness and watchfulness about how that $150 million is going to be used and then we could have a better basis for judgment and for evaluation of the larger appropriation.

Senator PELL. Thank you.

Senator Randolph?

Senator RANDOLPH. Do you wish Senator Dominick to go first since you have been here and actually heard the testimony? I would like to accommodate you.

Senator DOMINICK. Thank you very much, Senator.

I won't be very long. I just want to congratulate Mrs. Edelman on being a very articulate and very fine opponent to the bill.

The title I report to which you referred, of course, we already know about. In the ESEA amendments, Public Law 91-230 which was signed into law in April of this year, we tried to deal with some of these shortcomings. Have we done it ineffectively or inadequately in your opinion, or has it just not had time to prove itself?

Mrs. EDELMAN. I have not had time to study that thoroughly, Senator. I know you did take some steps to tighten up and meet some of our objections. Again I say the key is in the enforcement. I don't think we lack adequate law to end segregation and discrimination. The problem has been enforcement, adequate money and will.

If we ride herd on administrative agencies and call them in to evaluate and tell you how things are working, to insure how you say you want your money spent is actually happening, it will be a major step forward. I think, again, that whatever legislative safeguards you did build in were a good step forward, but I think the key is going to be how they are actually enforced.

Title I in its own evaluation is going to come up with some great recommendations and is going to meet many of the problems we have in this report.

Senator DOMINICK. Section 10 of S. 3883 provides for money to be set aside for evaluation. I gather from your statement that you thought that this section was not worth anything but in your statement you advocate that we set up a mandatory requirement for biracial committees elected by the communities throughout the country to do the evaluation. In other words, you do want to have the evaluation done at the local level?

Mrs. EDELMAN. I would like to have several kinds of evaluation. One of the problems I have had is that they have been conducted by Federal agencies and very seldom do we see the results. So it does not make any difference if they keep them to themselves in large part.

Second, we get a more objective evaluation if you also have outside evaluations of agency programs. I think agency evaluations per se, have to be a bit defensive. I am just simply saying I think outside community groups and experts ought to be eligible under this act to do evaluation of the Federal programs.

Senator DOMINICK. This could cause a situation where the biracial committee would approve a program and HEW would oppose it. What then?

Mrs. EDELMAN. Then I think we have to have the Congress resolve that issue, but I think that would be more healthy than having the agency coming in and saying everything is terrific when people know that it is not. But still I think we get a more healthy internal evaluations if external evaluations also exist and if the Congress and the public can then look at them and decide.

Senator DOMINICK. On page 5 you criticize the bill before us for not furnishing sufficient monetary incentives for school districts to desegregate. Do you think that requiring voluntary desegregation plans to comply with title VI is inappropriate?

Mrs. EDELMAN. No, sir.

Senator DOMINICK. The question, then, is how voluntary does it become?

Mrs. EDELMAN. Again, voluntary is meeting a standard in order to get Federal money. Again title VI requirements are those requirements that have been ruled minimal by HEW as standard for dispersal of Federal money. I think title VI guidelines are extremely reasonable, they are the minimal standards that the courts have required. I think those school districts who would want to act voluntarily would be those who would not mind the standards set up by title VI. Again I think one can work out timetables particularly for urban districts which would recognize their problems and the size problems, the transition problems and give them time to come into conformity and provide enough Federal money where they would want to do this.

Senator DOMINICK. Mrs. Edelman, I think you have presented some very fine points in your statement. Some points are certainly constructive and, as such, I would support. Somewhat like the chairman, I recognize that there are limits as to what we can do within a congressional committee or within Congress itself unless we try to establish a Federal education system, which I personally oppose.

Complete Federal control of our public education system is not a reasonable method of achieving integrated quality education. This is certainly a principal factor to be considered. When the means to achieve integrated quality education include control of teaching programs to the extent that black studies be included or imposition of Federal standards for both teachers and students, then we are injecting ourselves into the local administration of each school district.

Mrs. EDELMAN. Senator, they are not new issues that affect the courts, they have already been decided and title VI has already decided some of them and this is already the law in most instances. We are not doing anything new here, all we are saying it let's enforce what title VI already says.

Again we are simply preconditioning the use of Federal money on conformity with the law. So there is very little that I have recommended here that recommends a Federal takeover of schools. Title VI is supposed to do most of these things already, so I don't really think there is a practical problem.

Senator Dominick. Although you probably don't realize it, I am on your side insofar as achieving equal educational opportunity for every child. Thus I am concerned about creating mistaken impressions about increased governmental involvement in education which would compound the present problem.

Mrs. Edelman. I just think you have to answer your opponents by simply saying the Federal Government cannot do anything less than Federal law requires and that is all we are doing.

Senator Dominick. That is very true: we can always cut off all money to the schools and then the question arises, as I pointed out previously, as to whether this really promotes the education of the children. Please accept this as constructive criticism of what I foresee as the problems here. I do think, as I said previously that your very able presentation will be helpful.

Senator Pell. Thank you.

Senator Randolph?

Senator Randolph. Mrs. Edelman, I have scanned your statement, which I believe you did not read, but made comment on points that you felt you should stress to the subcommittee.

Mr. Edelman. Yes, sir.

Senator Randolph. Before I go into one or two other matters, I believe I heard you say that there was a reluctance of some persons to testify. Did I hear you state that there might be an intimidation of certain persons who would want to testify?

Did I hear you wrong?

Mrs. Edelman. I used it perhaps in the wrong context. I didn't mean anybody else had intimidated anybody from coming before this subcommittee. They felt intimidated about the thought of coming here and coming out against desegregation money, in light of what many of them feel at this point are many unanswered questions. Intimidation is not used in a coercive sense.

Senator Randolph. I appreciate your clarification, because I felt you would not want it to stand that way on the record, or I would not want it to stand that way in the presence of our chairman of the Select Committee on Equal Educational Opportunity.

Have we had any difficulty with persons feeling that they should not come before our committee?

Senator Mondale. We have had a few whose names must remain unmentioned who have expressed a desire to declare privately, but not publicly, their belief in the value of successful integration. Many of these individuals are in school systems where public testimony would expose them to political repercussion and jeopardize, in their judgment, the success of on-going efforts.

Senator Randolph. I am sorry to hear that personally, because I know it occurs not only on the subject matter such as we are discussing this morning, but from time to time it occurs on a variety of bills before standing committees or subcommittees of the Senate where, for one reason or another, a person connected with a company producing a product may feel that his testimony or her testimony might be a reflection that that person would not want to involve himself or herself in.

Senator Mondale. Several people I have talked to could present testimony which I think would be powerful in that such hearings would constitute an expression of interest by the Senate in communities whose representatives tell us that they have saved a lot of money through integration, that the kids are doing a lot better, blacks particularly, that the whites are not being hurt, that the children are getting along nicely.

If everybody would just leave them alone, the community would never go back to the way they were. Unfortunately then, in actuality, the last thing they need is to be in a public Senate hearing where they would become a national symbol of the value of quality integration, and because of this fact soon become an example of the power structure being demolished.

Senator Randolph. I thank the chairman of our committee for giving a clarification on this point. There are witnesses, as he knows and members of our subcommittee here, who for the same reason will not testify in court.

This happens constantly and I regret the situation.

Senator Mondale. If I might interrupt, you know this is an old tactic; sociologists once called it the illusion of universality. When all other arguments fail, you say everybody acts this way, so by virtue of that fact, this must be the only way that one can act. In fact, there are in the South some exciting quality integrated experiments underway.

Senator Randolph. Mr. Cody told us.

Senator Mondale. Yes. That particular one was in North Carolina. There are some elsewhere that are working very nicely, but, as I have said, in some instances those who are in the system would much prefer nothing be said about it.

Senator Raldolph. Mrs. Edelman, I want to have you look to your prepared statement.

Mrs. Edelman. All right, sir.

Senator Randolph. The memorandum from you in reference to this S. 3883 proposal introduced by Senators Pell and Javits.

You speak of the question, Where is the money coming from? A member of my staff indicates that you did enlarge in a degree and say that when you have asked questions of those who serve on the committee headed by Vice President Agnew, that there have been perhaps a variety of reasons for conflict or confusion pattern of answers.

Now have you asked by written communication certain questions?

Mrs. Edelman. No, sir. I have had extensive meetings with staff members, with Dr. Cody and Dr. Coleman and I must say that I can give you several of the answers. I have gotten assurances from one Cabinet member that the money is not coming out of other poor people or minority program.

On the other hand, I have gotten answers from lesser administration officials that the money is going to come out of unobligated funds, and we don't always agree on what we mean by "unobligated funds."

Does that mean that money is going to be appropriated and not going to be spent or was not ever obligated? On the other hand, I keep getting rumors that maybe some of this money will come out of model cities, or that maybe some of this money will come out of other poor peoples programs.

So I frankly still am a bit confused by what is meant by "unobligated funds." What they are doing is simply cutting back on the budgets of other programs, that they just are not going to spend the funds appropriated.

One Cabinet member I must say has said it will not come out of these programs, but on the other hand, I have gotten contrary expressions from other administration officials. I would like to believe the Cabinet member.

Senator **Randolph**. Last night rather late in the Senate we had a vote on the amendment of Senator Williams of Delaware, which went partially to a situation of this kind where there would be a ceiling upon the expenditure for this or that program or project.

I am only mentioning that vote because I think the decisiveness of the defeat of the amendment is indicative of the desire of the Congress to assert and reassert its belief that there are priorities to which the Congress must direct its attention to in the coming weeks and months and that we will not place the responsibility even in a reluctant or an eager gesture or direction upon the President of the United States; he himself or those associated with him will not call the shots, as it were, but the Congress with certain commitments and beliefs and priorities would exercise its judgment and control at least in part the purse strings.

I mention that to indicate that I think we have a recurrent challenge, Mr. Chairman. I spoke in my remarks in opposition to that amendment, which I think are apropos, at least in part, to what Mrs. Edelman is saying here today.

Mrs. **Edelman**. I think that is very good, Senator.

Senator **Randolph**. Now there is just one matter that I would like to ask you to make a little clearer for me. Perhaps you did, but again I am advised that you might have spoken in generalities, at least some generalities, when you said that the moneys which would be authorized apparently would be appropriated and ready for use if legislation of this kind or other programs already in being were advanced if there were not safeguards.

Now I am not certain just what those safeguards are that you are thinking of this morning.

Mrs. **Edelman**. Senator, my safeguards are very specific. What I want to do is to insure that this money which is supposed to be desegregation money is spent in such a fashion that we desegregate rather than the opposite, and that we somehow make sure that the local school districts conform to title VI and to the 14th amendment standards expressed by the courts in the school desegregation area.

This is certainly not always true in other Federal education programs which we have shown through studies of title I and through our understanding of the practices of many school districts in title VI. What we would like to do is ward off as much waste and as many abuses as possible.

I am not sure those school districts that are going to make real efforts to desegregate are going to be the ones to get this money. I think we can make judgments which districts are not going to act in the utmost good faith to use this money very well.

What I have done on pages 7, 8, and 9 is to list 14 things that I think we should look at and 14 districts or types of districts that I think we should not give money to initially. Most of the things I have named here are things that should be and are generally outlawed in title VI guidelines.

174

The only problem is that they are still doing it, and since this is supposed to be special desegregation money, I would like to hopefully use this money as an attempt to clear up some of the abuses of title VI and make sure we are going to get those districts to act in ways to use this money best, and therefore I have set out these things on pages 7, 8, and 9.

Senator RANDOLPH. I have seen them.

Mrs. Edelman, I agree with you that the money appropriated by the Congress and committed to certain programs should be used for those programs.

I think, Mr. Chairman, that we in the Congress have a very real responsibility to continue always to look over the shoulder, not in the sense of policing an agency, but in the sense of seeing that the intent of the Congress, which is clearly written into the law, either in the language of the bill or in the report accompanying the bill, that that agency or agencies carry out the provisions of a bill or legislation which comes from the Congress of the United States.

I think we have a responsibility also, Mr. Chairman, to hold what we call "oversight hearings." Perhaps a good word is to say that the agency just made a mistake, so it was an oversight, but really the word that I have just used is expressive of the situation because often there is a reluctance to carry out the intent of the Congress and even in part there are subversive acts of the agencies in carrying forward what is, I think, the clear and understandable intent of the Congress.

I wanted to add to these comments in reference to your appeal and your advocacy of the very clear understanding if what the moneys have been appropriated for and how the moneys are being used.

Mr. EDELMAN. Senator, I appreciate that. I will just make one further comment.

It becomes really very crucial in this area that there be very careful congressional monitoring. This country is in a national debate about whether we are going toward integration or separatism, whether integration works. We are going to use the results of these moneys to try to influence this argument one way or the other.

My basic position all along over the last 16 years, and particularly now when we hear great cries about the fact that integration is not working, that the black community is against it, that the whites are not going to accept it—is that this country has never really tried it. This country has never really tried it.

In the last 16 years if we had tried all the ways to desegregate and to integrate, as we have to segregate, we would have a much different society today. If we had had strong and consistent Federal enforcement policies, which we have never had, we would have a very different result today and if we had had a Federal Government that over the last 16 years has made it very clear, and particularly since 1964 made it very clear, that we are going to do this, we are going to stick with it, there are no outs; if we had done that, we would have a very different result today.

Now if the Congress says we are going to use this money in ways that are going to work and which are going to result in desegregation, then that is going to be a mighty important thing in the whole argument in the next year or 2 years as to whether or not desegregation is going to work.

I would like to see us give it a chance. I think a lot of that is going to depend on how Federal money is spent in the future and what kind of Federal enforcement policies we are going to have. I think this Congress has a great deal to say in that.

I don't want us to come back in 2 years saying integration is not going to work, we have spent $1.5 million and that proves it and we have not insured that it was used to integrate, rather the other way around. I think we have a special obligation in this area because it is going to determine in large part the future of our public school system.

I appreciate your concerns about the problem. It is crucial.

Senator RANDOLPH. Fine.

Mr. Chairman, I think Mrs. Edelman makes a very significant statement and I think she couches it in language that is very appealing, because not only is there recognition of the problem, but also the belief that it can be done. I think it is very important that we not falter, we not feel that the efforts may have gone for naught.

I know, Mrs. Edelman, you recognize that you are human and all the members of this committee are human and there are those that sit upon the court sometimes that are human beyond decisions which we feel should be made. So there are varying degrees of edicts that come from members who sit on those bodies and other bodies.

I would only want to add to what you say, and I am in complete agreement with what you have just given as your thinking. I think that we would be wrong in allowing the attitude to pervade this country, and it does—or at least to pervade it to a greater degree and I hope it will be lessened—that we are tolerant on this subject.

I think you know anybody can be tolerant, but you can still not have understanding. I think there is a wide difference between those two words and I think they need to apply to exactly what we are doing here and need to do to a great degree. So I hope and believe that you will try to help us to understand, as you have today, not the mistakes that have been made alone, but that the high purpose that we must all attach to this job which has to be done.

Would you agree?

Mrs. EDELMAN. Yes, sir.

Senator RANDOLPH. Thank you very much.

Thank you, Mr. Chairman.

Senator PELL. Senator Mondale, before you came in I expressed on your behalf the high regard you had for Mrs. Edelman. You talked to me about her a couple of times. Your select committee is presently studying the question of equal educational opportunity which naturally includes the desegregation and integration aspects of this legislation.

We will be grateful for whatever help your committee will give to us.

Senator MONDALE. Thank you, Senator, for your very kind comments.

I am very grateful that you brought Marian Edelman before this subcommittee, because in regards to the Emergency Act, I believe that the testimony presented this morning is the best single statement I have heard on the subject, though I must say I am not surprised by its quality: it is what I would have expected from Mrs. Edelman and her organization.

I want to say how grateful I am to you. I think it is really a remarkable statement.

Mrs. EDELMAN. Thank you, Senator.

Senator MONDALE. I don't want to keep you here much longer, but would just like to ask you about a few points.

If you were required to choose between a program of law enforcement to vigorously assert the constitutional requirements or a policy of monetary assistance to desegregating school districts which method would you find most effective to pursue the goal of quality integration?

Mrs. EDELMAN. Very easily I would choose law enforcement, because there is no substitute for that. What we need more than anything else is strong Federal enforcement policies along with Federal money and enough personnel to do it and where the Federal Government is not willing to do it, the means for private groups who are willing to do it.

Senator MONDALE. Is it your impression that the biggest problem in the quest for desegregation is a lack of will rather than lack of money?

Mrs. EDELMAN. Absolutely.

Senator MONDALE. And, in fact, are there not occasions in which where the will existed for desegregation money has been saved in the process?

Mrs. EDELMAN. I think so in many instances. Nobody has done the full cost analysis of what it is going to cost this country to desegregate as opposed to what it is going to cost to segregate, except I think commonsense tells us that the South, which is the poorest region, is not going to be able to run two bad school systems.

In your urban areas where inner city schools are starving for adequate funds, you can't afford to support decent urban school districts and suburban school districts. It is going to be much cheaper to reorganize—it is going to require less schools, less teachers, I think it will probably be cheaper in the long run to have fully integrated school systems. To say nothing of the savings in human costs in terms of changed attitudes and aiding our planning to live together.

Senator MONDALE. We know that in most title VI compliance orders, the amount of money required for busing actually decreases in districts where desegregation has been ordered. That is a major cost that has gone down. We heard testimony the other day from some lawyers that one of the things which happens when dual school systems finally desegregate is that they have a surplus of textbooks and teaching material, and in many cases are sending it off to the private segregated schools.

The point I am making is that, in fact, by bringing their children together, school districts have more equipment than they need; conversely with the dual school system it is costing more to have this kind of overlap. Would you agree with that?

Mrs. EDELMAN. Absolutely. One of the things I just would like to say, Senator, is I think that a whole lot of misinformation has clouded this whole area about busing. The bus does not cost as much as a building and I think that is just plain old commonsense.

I think it is false to juxtapose the cost of quality education with the cost of busing. I think the national figures for busing are $42 per pupil for a year whereas the cost of running a segregated compensatory education program runs between $500 and $1,000 per year, because you must take into account construction, smaller class sizes, hiring of a greater number of teachers, and so forth. There is a great falsehood to talk about the cost of busing because it is really a negligible cost in the context of what we are spending to maintain segregation.

Senator **Mondale**. I was struck by an article in the Harvard Educational Journal on the more effective school system in New York City which concluded: First, that it is very hard to show that any progress was achieved through compensatory education in racial isolation. Second, if you were to implement a similar program nationally it would cost something like $190 billion over the next decade.

Now I find it very hard to impress upon and clarify for my colleagues and the degree to which the law is not being enforced; their, perhaps understandable, disbelief can be somewhat frustrating to me, having lived with so much testimony and irrefutable evidence of the hypocrisy and deception which pervades desegregation across this Nation. We have heard from lawyers in Mississippi, Mr. Melvin Leventhal for one, who estimates that 20 percent of the school districts are giving away property, faculty, desks, buses and schools to private segregation.

There is absolutely no doubt that this assistance is unconstitutional. I don't believe that proving it would involve a difficult lawsuit.

Senator **Pell**. If the Senator will forgive me, we are going to have a rollcall vote at 12 and we still have one more witness.

Senator **Mondale**. I am sorry. I have just a few more questions here.

Would you agree that there is an enormous unmet need for law enforcement to sustain the constitutional principles that have been declared? In other words, we are not 5 percent of the way along the line toward enforcing the constitutional rulings that already exist.

Mrs. **Edelman**. Absolutely in terms of kinds of abuses. The fact is for all of our 16 years that we have gotten token desegregation. We are not a small step away from quality integration.

There is much more nonconformity with the law than there is conformity.

Senator **Mondale**. Now I have several other questions. I will submit some in writing, I think.

Senator **Pell**. Senator Javits will do the same thing.

Senator **Mondale**. I just have two short questions.

What do you regard to be the significance of the issue involved in the *Charlotte-Mecklenburg* case? Is this a minor issue or a major one?

Mrs. **Edelman**. I think the *Charlotte-Mecklenburg* case, the Charlotte-Mecklenburg District, is perhaps the most important case since *Brown* v. *the Board of Education*, because it may well determine the whole future of desegregation. It is going to determine the whole quality of integration, it is going to determine whether that disestablishment of segregated school systems that have been established by the law is required.

It is going to determine whether black schools and white schools are going to continue to exist. As long as they continue to exist, you are going to have your problem, because people will always have somewhere to run to.

It is going to determine whether the 14th amendment constitutional rights in this country are individual rights for black children, because what difference does it make to the child, 10,000 children or 100 children who are left in all-black schools that the majority are receiving a desegregated education, what about them?

We are simply going to allow another 16 years, another 20 years of evasion. Are we going to have full quality integrated education in the country, or are we going to have piecemeal token desegregation and restricted constitutional rights to black and to white students.

I think it is a crucial case and I am terribly disappointed with the Supreme Court's equivocal stance yesterday. It is crucial to decide the issue before September because what we see is the administrative proceedings being affected by the rule of reasonableness of the *Charlotte-Mecklenburg* case and other district court cases where judges continue to let all-black and all-white schools exist. It is going to take us years if we have a lot of district court decisions this summer and a lot of the administrative proceedings this summer which approve plans which allow the continued existence of all-black and all-white schools. It is going to take more years to come up with new plans should the Supreme Court rule in our favor, which says you have to totally integrate. I strongly feel that anything is unreasonable after 16 years, which denies black children constitutional rights.

Senator **Mondale**. I am glad you made that point.

One final question: it involves a realization that has come slowly upon me, but I think it is fundamental. Desegregation becomes unjustifiable, unworkable, and immeasurably destructive when not done properly. It is not fair to those black children to close down their schools and throw away their trophies and break up their band and then move them into a system which insults them and the law of the United States in numerous ways such as degrading their black teachers, segregating them in classrooms or not allowing them to become class officers—all the practices inimical to the creation of a sensitive, humane educational environment, so necessary for stable, productive integration.

There is only one way to integrate and that is through a warm enthusiastic commitment for the process. Remedies which degenerate into halfway measures are probably more damaging than nothing at all. Would you agree with that?

Mrs. **Edelman**. I agree with that.

Senator **Mondale**. Thank you very much.

Senator **Pell**. Thank you very much, Mrs. Edelman. Thank you for your very, very good testimony. The subcommittee will feel at liberty to send you written questions, too, if they may.

Mrs. **Edelman**. Yes, sir.

Senator **Pell**. Thank you.

(The prepared statement of Mrs. Edelman follows:)

STATEMENT OF MARIAN WRIGHT EDELMAN BEFORE THE SENATE SUBCOMMITTEE ON EDUCATION OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, JUNE 30, 1970

I have come before you today to discuss the Emergency School Aid Act of 1970 (S3883) as it relates to the problems incident to desegregation and racial isolation. I strongly support federal aid to education, and I strongly support federal financial aid to quality integrated education. To the extent that this bill stands for these principles I support it. However, as presently written, I do not support S3883.

Experience with federal assistance to education, especially with Title I of the Elementary and Secondary Education Act, has shown that unless there is a clear understanding of the goal to be achieved, a well-developed mechanism for review of project applications and dispersal of money, a simultaneously established monitoring system with tough sanctions always applied when necessary, and an operational system of evaluation, that the assistance is often wasted, misused, and diverted. These areas are not developed in S3883 except in the most superficial way and I will discuss this in greater detail in a moment.

Moreover, I am convinced that no amount of money is or can be a substitute for decent, strong and consistent federal enforcement policies in the school desegregation area.

This Congress can appropriate $50 billion for aiding desegregation, but as long as the Fourteenth Amendment mandates of the Supreme Court and Title VI of the Civil Rights Act of 1964 are not enforced by this or any Administration, we are wasting our money and effort. The way to achieve real integration in this country today would be for this Administration to vigorously go on record by its words and by its actions in favor of school integration, South and North. It is not doing so. This would mean revitalizing the use of Title VI fund cutoffs, which have been all but vitiated in the last year. It would mean stopping negotiations with recalcitrant school districts for minimal compliance standards and requiring, in accordance with the United States Supreme Court mandate in Alexander v. Holmes, complete unitary school systems where no school is racially identifiable. It would mean stopping the delays and excuses of Southern school districts not fully complying with desegregation decrees, such as occurred in the 33 Mississippi school districts last fall, rather than joining hands with them as did the Department of HEW and the Department of Justice. It would mean stopping support for private school tax exemptions which help encourage whites to flee public schools that have been more than tokenly desegregated in the South. It would mean a changing concept of integration by the federal government which would get away from simply a one-way accommodation in desegregating by the black community and one that recognizes the need for quality integration rather than token compliance. The federal government must act vigorously to stop evasive practices such as resegregation within schools, testing and tracking, and other devices which conflict with the letter and spirit of the law. The President, Vice President and the Attorney General of the United States must end statements having the effect of intimidating lower courts seeking to further desegregation by all means at their disposal, including busing, by labeling them extreme as did the President of the United States in the Los Angeles school decision. Federal commitment to integration means ceasing to side with recalcitrant school boards seeking to evade real integration as the Justice Department did in Swann v. Charlotte-Mecklenburg and in many of its administrative proceedings. There the Justice Department has supported a new "rule of reasonableness" which sounds like more "good faith" and deliberate speed. I challenge anyone to prove to me that anything is reasonable that delays the constitutional rights of black school children after sixteen years. Strong federal backing for desegregation means supporting those districts that have made real efforts to desegregate rather than encouraging and rewarding, as S3883 does, those districts that have dragged their feet all this time.

After sixteen years of struggling to eliminate the dual school structure in this country, whether de facto or de jure, segregation has been and remains the rule. The Emergency School Aid Act of 1970, as I understand it, is designed to deal primarily with the massive change which will affect many school districts as they desegregate this fall. A great deal of skepticism prevails in the black community as to the true intent of this legislation. There is no mention of the educational benefits of integration, and little substance concerning how to benefit the cause of real desegregation. The context in which this legislation was originally proposed, the President's March 24 statement on desegregation, leads one to wonder if this bill is not really a political buy-off for the South. I have had extended conversations with Administration officials regarding the use of money that may be appropriated under this Act and their lack of recognition of the real problems of desegregation and lack of careful thought about how the money might be best spent, with appropriate safeguards written in and stated priorities, does not lessen my own skepticism about the use of this money. With this general skepticism in mind, then, I will go on with a detailed discussion of this bill's criteria and proposals.

ALLOTMENTS AMONG STATES

One of the most interesting aspects of this bill is the allotment formula among the states which is based on the "adjusted number of minority group children" for any state. This allotment formula, spelled out in Section 4(c) is a double-counting device which raises two issues and potential problems. The adjusted number of minority group children in each state double-counts minority children in school districts which are carrying out a plan of desegregation pursuant to a final federal court order issued during the past two years or pursuant to submission of an acceptable plan during the past two years to the Department of Health, Education and Welfare. Under this formula, mostly Southern school districts are double-counted since in the North there has been little desegregation under federal court orders or Title VI requirements of the Civil Rights Act of 1964. Probably only ten to fifteen districts in the North would be double-counted, including Pasadena, California, South Holland, Illinois, and Denver, Colorado, which are desegregating under federal court orders, and Union Township, New Jersey, which is desegregating under Title VI, but excluding Los Angeles, California, which will be desegregating under a state court order. It may be reasonable to funnel the greatest amount of financial aid to states with school districts which are or will be in fact desegregating, but you should realize that in so doing it is the most recalcitrant school districts that are being rewarded essentially for holding out to the bitter end, and that there is little monetary incentive for voluntary action to desegregate.

Berkeley, California, for instance, which has taken voluntary steps to desegregate, is not double-counted. Second, and more importantly, there is no distinction between final federal court orders which may meet or may not meet the constitutional standards of higher courts. What is to happen with Atlanta where a federal district court judge ordered a neighborhood zoning plan leaving 56 all-white or all-black schools and where the plaintiffs are appealing to the Fifth Circuit Court of Appeals, or to 50 to 100 other school district cases where appeals are pending? Districts which continue in litigation after the final order of a district court should not be double-counted or considered eligible for funds under this Act. To do so is to condone the persistent approach of Southern districts to do as little as possible, while the slow process of judicial relief moves to insure constitutional rights.

ELIGIBILITY FOR FINANCIAL ASSISTANCE

I do not have serious problems with Subsections (1), (2), and (3) of Section 5 outlining the types of school districts eligible for assistance as far as they go. As I shall point out later, I do have reservations about just what are "special programs or projects to enhance the possibilities of successful desegregation," in Subsection (1)(c), and I am concerned with Subsection (3) that in funding projects short of integrating schools in districts, that a 10,000 minority student cut-off is too low. Most districts with only 10,000 minority students could integrate without great difficulty.

Determining which districts are eligible for aid is the most important area in making this Act truly effective. Given the degree of widespread discrimination which we have witnessed in supposedly integrated schools and desegregating school districts, the vagueness and glaring omissions of Section (5) lead me to conclude that this Act may well be a political sop, for Southern school districts especially, to spend freely however they desire. Are districts eligible to buy portable classrooms to put on white campuses when structurally sound and often newer black schools are available for use, or to institute sophisticated tracking systems based on biased standardized tests which will result in segregated classrooms, or to plant grass, pour concrete for sidewalks and playgrounds, install florescent lighting, and put down linoleum floors in formerly black schools now that white students will be attending them, or to hire new teachers after dismissing and demoting black teachers? It can be said that such discriminatory acts violate Title VI of the Civil Rights Act of 1964 and, therefore, are automatically conditions rendering districts engaging in them ineligible for any federal funds. But the Department of Health, Education and Welfare has never initiated fund termination proceedings against any school districts for closing usable black schools or for firing black teachers, and the Department of Justice has intervened and reopened few, if any, court cases where districts are segregating students within individual schools. Elimination of these types of degrading and discriminatory actions -- moreso than fancy, undefined, new services -- are the key to real, successful desegregation. In order to make sure that funds are not directed into these types of situations, minimal criteria should be drafted which would spell out which districts would be eligible for funds and which not, to insure that priority will be given to those districts who will use it best based on a record of decent effort towards desegregation and to discourage recalcitrant districts from submitting applications. This would also lessen the massive administrative burden of processing hundreds of project applications this summer. It would be most desirable if some of these criteria were drafted right into the legislation, but at a minimum, detailed guidelines should be developed. These guidelines should exclude from funding:

1) School districts still operating under freedom of choice plans;

2) School districts with unupdated court order plans (Dallas and Fort Worth, Texas, and New Orleans, Louisiana, among others);
3) School districts with final, federal court orders still subject to appeals by the plaintiffs (Charlotte-Mecklenberg, North Carolina, Atlanta, Georgia, and Mobile, Alabama, among others);
4) School districts where state and local fund allocations or millage have been lowered in the last two years (there is a trend toward this in the South with the increase of the private school movement and the use of federal money to supplant the lessened local support for public schools);
5) School districts negotiating long-term teacher contracts with provisions that if a teacher is assigned to a school in which she does not want to work, she may quit and work elsewhere (in a private school) and still receive her salary;
6) School districts in states which permit tax deductions to private school attendees;
7) School districts which have transferred or sold equipment to private schools ;
8) School districts in which there have been firings and demotions of black teachers and administrators, or which have imposed new teacher qualifications not heretofore required that have the result of forcing many black teachers out of the system;
9) School districts that have refused and/or failed to take advantage of federal programs designed to help the poor and minorities such as School Lunch, Title I, etc.;
10) School districts that are maintaining segregated classes within schools;

11) School districts which have instituted new procedures which have the effect of resegregating pupils (there are a substantial number of these school districts which have instituted tracking and/or sex separation as a result of desegregation orders, and which impose tuition fees heretofore not required which principally affect poor black pupils);
12) School districts which have expelled black students for defending their rights and have denied them a just and fair hearing;
13) School districts which have chosen sites for new school construction to perpetuate segregation;
14) School districts which have closed down acceptable black schools rather than send white pupils to them.

Enforcing such guidelines will take a monitoring and compliance mechanism nowhere even hinted at in this legislation. Indeed, the general vehicle for administering this Act is not mentioned. In most proposed legislation involving funds of this magnitude the administering agency is identified or created. Does the omission from this Bill of such an agency mean that political wrangling and confusion continues in the Administration as to whether the Office of Education, the Office of the Secretary of HEW, or the Agnew Cabinet Committee on School Desegregation will administer it?

There is strong indication that the Division of Equal Educational Opportunity (Title IV) in the Office of Education may be used to administer this money.

The consensus of people knowledgeable about desegregation is that this would be extremely undesirable. The structure of Title IV (national, regional, and state centers) is extremely cumbersome, and Title IV's reputation in dealing with desegregation is one of extreme conservatism. For example, Title IV has yet even to try to develop desegregation plans for larger urban areas, particularly through the use of computers -- a method which has proven quite successful for private institutions drawing up plans. Title IV has proved in the black community's view to be a disaster, and to add to it additional money, in their view, would not be in the interest of desegregation. Minimally, before any consideration is given to using Title IV as a vehicle, a thorough evaluation of its effectiveness should be conducted and assurances made that the problems in its administration and personnel can be corrected. There exists also the real question of the capability of Title IV staff to administer a new and much larger program. The current Title IV budget is about $13 million. To take on immediately the additional burden of administering the $150 million during the summer and the larger sum when it is appropriated would require substantial additions and staff changes. Additionally, Title IV has few blacks employed at the regional and center levels (and some of those few that are employed are not respected in the black community), nor are most Title IV people specialists in school desegregation. A further argument against using existing agencies within HEW to administer the $150 million (or the larger sum) is that the lateness of the appropriations for HEW has resulted in a huge backup of funds in most programs, and in the processing of applications from states. It is unlikely that still another huge pot of money to administer can be efficiently done on top of all the other money that still remains to be dispensed.

After lengthy discussions with people in and out of the Administration, it appears that the best chance for effective administration of this money would be the establishment of a new unit within HEW, in the Office of the Secretary, with direct responsibility to the Secretary, and with a new staff. In this way responsibility can be pinpointed. In order to avoid the extra layer of bureaucracy, it should not be placed in the Bureau of Elementary and Secondary Education within the Office of Education.

Furthermore, the Office for Civil Rights in the Office of the Secretary, while possessing a sorry record in taking actions to prohibit and correct discriminatory actions by desegregating school districts, does have considerable expertise in identifying discrimination and working with school districts. It will be undertaking a comprehensive audit of all school districts desegregating this fall under voluntary plans and court orders, and should, therefore, be required to give an affirmative stamp of approval to all applicants prior to the award of funds under this Act. This office employs professionals dealing with schools in the seventeen Southern and border states -- the largest collection of education civil rights specialists in the government. But even this office will probably need a temporary if not permanent increase in staff to perform this function.

In addition to guidelines spelling out in negative terms the eligibility of school districts, there should be some positive requirements for eligibility. For too long, school systems have been controlled by local community white power structures. Unable to exercise a voice in school policy in racially segregated systems, black people have used the desegregation strategy to gain a voice in school affairs. There is now more black interest and participation in school affairs than at any past time. But while over 90 black people sit on Southern school boards, this is by no means even token representation. Through the denial of voting rights at the local level when school board elections are held, and through the lack of even being considered where school boards and administrators are appointed, black people are denied even minimal control over the educational destiny of their children. In order that the funds under this Act do not perpetuate this state of affairs, a strong and mandatory provision should be included in the Act for the creation of bi-racial committees elected by the representative communities to be involved in the planning and approval, monitoring, and evaluation of applications submitted and the expenditure of money. Such a structure is the best hope for effectiveness. Many courts are recognizing the value of such groups, and are appointing bi-racial committees to oversee school desegregation plans. Title I has a provision for similar advisory committees, but it has not been well enforced. This must not be allowed to happen here.

In addition, a strong public information requirement should be built into the Act which would insure that the applications are open to the community, and simple appeals procedures should be built in to allow community people to protest bad and/or inadequate plans or failure to spend money as approved. Cutoff provisions of district funds should be written into the guidelines where school districts fail to carry out the approved projects or to conform with the law. There should also be a reporting requirement that local school districts shall report on the operation of projects and the progress of these projects in furthering desegregation to HEW and to the appropriate committees of Congress.

AUTHORIZED ACTIVITIES

While not quite as weak as the section on eligibility, Section 6 , outlining certain things for which funds under this Act can be used, barely scratches the surface as far as substantive proposals are concerned. While not exclusive, the things that are outlined are drawn up in such a way that they will be subject to abuse and internal segregation devices. Many more specifics must be spelled out if the money is not to go down the drain or achieve the opposite purpose. I will discuss the outlined proposals one by one.

Section 6(a) -- Provisions for additional personnel or other staff members and the training or retraining of staff. Titles I and IV have been doing this, as well as the Education Professions Development Act. The concept of training has been merely to have a few staff seminars by whites for whites which has made very little practical difference in understanding or improving the desegregation process. Secondly, there has been much evidence of use of money simply to pay already existing teachers, giving them a different title, but little different function. Federal money has been used to equalize black teachers' salaries which is the states' burden (in other words, to supplant state money). I can think of very few needs for additional staff and professional members incident to desegregation, and, such needs as there are should be specifically spelled out in order to ward off misuse. Such staff should include:

(1) Community relations staff specifically designed to educate and help the community in planning and adjusting to desegregation.

(2) New bus drivers where additional busing is required under the desegregation plan.

(3) Teacher aides and transportation for these aides with the priority being given to placement of parents which would be an additional link of the community to the schools.

(4) Guidance counsellors that can specifically relate to the problems of black children in white schools, as there have been complaints from many black pupils about the harsh, insensitive treatment from white counsellors concerning their daily problems and career concerns.

(5) Hiring of special black studies teachers or those capable of teaching black history, etc., which does not now exist in white schools.

(6) Hiring of additional bi-lingual teachers where Spanish-speaking and other language minority children are present.

(7) Earlier in this paper I made a strong recommendation for the establishment of bi-racial community committees that would help plan and approve applications and monitor and evaluate the use of this money. One would like to see these committees with staffs so that they can be truly effective.

(8) If the Department of Justice does not live up to its recent promises, there may be more than 200 school districts out of compliance with the law, many not receiving federal funds. In addition, there is almost certain likelihood to be hundreds or thousands of discriminatory actions taking place this fall in supposedly integrated schools. The

lack of resources in the private sector and the unwillingness of the Justice Department to take action against these districts results in the perpetuation of segregated schools and school systems affecting thousands of children. These districts and schools should be desegregated forthwith and a mechanism should be worked out and/or a percentage of the money under this section set aside for either appointing counsel or providing subsidies for private lawyers or legal services to bring suits in these non-complying districts.

Section 6(b) -- Provides for remedial and other services to meet the special needs of children in desegregating schools including special services for gifted and talented children in such schools. This seems nothing more than an invitation to use federal money to pay for testing and tracking and therefore resegregation. Moreover, there is Title I which is supposed to provide remedial help for minorities and poor children. The only use for which money should be dispensed under this section would be to hire after-school tutors, perhaps parents or other students, to help those who need it.

Section 6(c) -- Provides for comprehensive guidance, counseling and other personal services for pupils in addition to the guidance counsellors mentioned above. One of the great needs is for student support activities. Conversations with black students from various parts of the South indicate that much of the disruption and possible violence this fall will come from the failure of school systems to encompass blacks in their concept of integration, i.e., to understand that blacks are no longer willing to come to 'white schools' solely on white terms. These children are concerned about maintaining their identity and respect in their new environment. They want to be free to wear Afro hairdos and dashikis, to participate in extra-curricula activities fully, to have a fair chance in homecoming elections, have a chance to participate in student government elections and have them reflect their presence, and not have these elections conducted the year before. There is no greater need than to have fair grievance procedures to which these students can relate. More than 300 black children, and unfortunately some of them the brightest and most imaginative, have been expelled from schools on issues such as these in the last year and have remained out of school. This cannot be continued. Fairness must prevail, and the special needs and growing militancy of black and Chicano students must be recognized and responded to. Moreover, extra support for black-white student activities in an effort to get students to know each other better must be devised and supported where possible. It would seem worthwhile if students could be brought together during the summer to discuss expectations and potential problems. Nothing should precede the priority of establishing bi-racial student committees with defined functions to help in implementing desegregation plans in their districts.

Section 6(d) -- Provides for the development and employment of new instructional techniques and materials designed to meet the needs of racially isolated children. I am unclear as to what this section means, but hope that the kinds of projects permitted would be limited to rewriting textbooks that would fairly reflect the history and status of blacks, providing books on black history, black art, poetry, etc. (even though this is what Title II of ESEA can theoretically to). The purchase of audiovisual equipment, etc., bears no real relationship to desegregation and many school districts stocked up on this with Title I money anyway.

Section 6(e) -- Innovative interracial educational programs or projects involving the joint participation of minority group and non-minority group children attending different schools.

I am skeptical about this section and whether anything really imaginative will come out of it, but I assume that what is meant is Dr. James Coleman's idea of multi-site and multi-purpose activities and the possible establishment of joint cultural and physical education programs, etc., which children from all schools could attend. There is a danger, however, that these programs will become ends in themselves and substitute for reorganizing school systems on a permanently integrated basis.

Section 6(f) -- Repair or remodeling or alteration of existing school facilities and the lease or purchase of mobile classroom units or facilities.

This section should be deleted completely. If it cannot be, then it should be limited to a very small percentage outlay (less than 5%). Some Southern district interpretations of 'remodeling' has, I am informed, meant building fences around all-black schools to keep white children assigned to black schools out of black neighborhoods, and painting bathrooms in black schools to make them more acceptable to whites. I believe that expenses of renovation incident to desegregation are few, and that local school districts can and should meet expenses for the very minor alterations that would come in the normal course of business. Mobile classrooms are hated in the black community because they reflect temporary and substandard additions to white schools which are overcrowded because of the failure and refusal by some school officials to assign white pupils to adequate black school buildings. Instead they close good black schools and put black children in mobile classroom units at the overcrowded white schools.

It is unclear whether or not construction is permitted under this Act. While it is not specifically mentioned, it is nowhere specifically forbidden, and I strongly recommend that not one nickel be given for construction. Title I money has been heavily used in the South for constructing new facilities to equalize black facilities with white ones, and therefore, perpetuate segregation. (If the thrust of this bill were to encourage voluntary integration, I would change my recommendation to allow funding for construction of integrated educational parks in large urban areas.)

Section 6(g) -- Provision of transportation services except that nothing in this Act shall be construed to require the transportation of students to overcome racial imbalance. One of the greatest sins of the Administration is its failure to recognize that it is the programs at the end of the bus ride which are important and not the bus ride itself. But given that blind spot and the resulting limitations, the provision as now written should be beneficial. However, the original Administration provision which would not only have cut out the voluntary efforts of busing to overcome racial imbalance, but would not have permitted busing in situations such as Los Angeles, would have been totally unacceptable and would have put in doubt the sincerity in proposing the legislation at all.

Section 6(h) -- Community activities, including public education efforts, in support of a plan, program, project or other activity under this Act.

This should be spelled out in very specific terms, and I would hope it would mean primarily that nonprofit groups, from the Jackson white mothers who organized in 1964 to save the public schools to black groups involved in desegregation efforts, would be fundable under this provision. It also would be helpful if under this section PTA's, which have been considerably weakened since desegregation, could be revitalized. Black colleges should be encouraged to institute summer and through the year tutoring programs for black pupils in need of remedial help.

Section 6(i) -- Special administrative activities . . . . It is unclear what "special administrative activities such as rescheduling of students or teachers" means, and I recommend that it be struck. The only possibility I can think of would be when there is large scale desegregation in the middle of the year such as occurred in January in districts affected by the *Alexander v. Holmes* decree, and it is unlikely that this will occur again. It is interesting to note that the local school boards managed to do it without federal help, and I would leave it that way.

Section 6(j) -- Planning and evaluation activities. There is absolutely no clue as to what is envisioned here, unless it is funding for the evaluation requirement of Section 7(b)(5) which is not very well developed.

Section 6(k) -- "Other specifically designed programs or projects which meet the purposes of this Act." This section should be removed completely or given specifics about the kinds of programs that the Secretary would consider as meeting the purposes of this Act.

Aside from the specific points I have just discussed, there are a few more general questions which remain unanswered. First of all, where is the money for this bill coming from? With all the talk of budget cutting, many of us are very skeptical. We are concerned that it not come from other programs for the poor and minorities such as Model Cities, OEO, Food Stamps, Title I or Headstart. It is not fair to make poor and minority children choose between a chance for a decent neighborhood, food, Headstart, and non-discriminatory education. If money is taken from any of these programs it will only confirm the suspicion that this Act is nothing more than a bribe for the white power structure.

Secondly, there is a real question as to whether the $150 million can be used well between now and September 30, 1970. Even if approval from Congress of the $150 million comes by the end of June, that leaves only three months to obligate the entire amount. I do not believe that an efficient structure and mechanism for processing applications or well thought out priorities can be devised within HEW in this short time. Moreover, it is highly questionable whether you will get any decent plans from states and a real danger exists of canned applications seeking to do the minimum to get the money. States are likely to do what they want to do -- if Title I is any lesson -- regardless of the project proposals which will be vaguely drawn. Worse, there is a real likelihood that the money will be used in the South to resegregate students within nominally desegregated schools.

Thirdly, how is the problem of drafting guidelines going to be handled? Who is going to have responsibility for this, and when will it be done? With the extreme weakness of the eligibility section of the Act, the guidelines become the most important aspect of the whole proposal.

Fourth, what is the role of the state educational agency regarding applications? A state veto would be a disaster, and even the thought of them distributing the money is uncomfortable, if the Mississippi experience with Title I funds is any indication.

Fifth, what happens when local school districts come in with bad applications? Can the Secretary turn them down and reallocate the money to other states with worthy projects? If districts in a state fail to meet the time deadline, say September 30, for the $150 million, in submitting applications, can the Secretary reallocate money to which that state would have been entitled to other states that have submitted good applications?

And sixth, what evaluation of existing programs has been made in order to avoid in the use of money under this Act the mistakes, waste, and abuses of the past? There seems to have been little evaluation of what is working and what is not and little consideration of preventing the use of this money to duplicate other programs. Many of the authorized activities in Section 6 are activities already authorized in other education legislation. Has anybody looked at the other programs and Titles to see if they are effective? For instance, teacher training is supposed to be the main thrust of the Education Professions Development Act. What kind of training have they been conducting, and where? How effective has it been? How will the teacher training, if permitted under the Emergency School Aid Act, be different? This bill authorizes the purchase of equipment and renovation and mobile educational facilities. Anybody familiar with Title I knows that many Southern school districts and Northern school districts have bought massive amounts of equipment. Why should they be permitted still more under this Act? Further, there is no logical relationship between stocking equipment and making desegregation work. Such minimal expenditures for reorganizing facilities can be paid for out of local funds.

If this Act is to be a real step toward facilitating integration, it needs to get off to as good, as strong, and as clear a start as possible. This will take a lot of work by Congress, the Administration, and state and local school officials. But if this kind of effort is not put into this Act, then this Act will be nothing more than a candy treat for the pain of doing what should have been done long ago, and another slap in the face to those who have struggled against intolerable conditions to achieve what was always rightfully theirs.

In its present form and in light of the issues raised above, I oppose Senate 3883. I would strongly urge major redrafting of any bill to provide money to desegregating districts which would give priority to the following areas:

(1) Enforcement: support of measures to desegregate those districts affecting thousands of children that are currently in noncompliance and without federal funds. This can be done through providing for attorneys' fees to private lawyers to seek court orders in these districts.

(2) Strengthening of local community groups and students by establishing bi-racial student committees in each desegregating district with real functions and bi-racial community committees to help plan, implement, monitor and evaluate this and other federal education aid programs. These committees should be elected by their respective schools and communities.

(3) There should be a strong public information requirement so that all elements in the community can be aware, informed and given opportunity to participate in development of programs.

(4) Nobody really knows what will really work to end racial isolation. I would strongly advocate a few concentrated and well financed experimental programs to help determine what is needed: for example, I would fund educational parks in one or two urban areas where this would totally integrate a system; I would encourage inter-district funding where such would relieve racially isolated schooling in certain urban areas; I would try a few model "magnet" schools in ghettoes to see if extra-quality education in an all-black school area will attract whites to

the inner city; I would test in larger measure Dr. James Coleman's ideas for multi-site, multi-purpose education to determine whether this proves beneficial in educational and in socializing terms to the pupils involved; I would try new desegregated experimental schools -- pre-school through high school (Syracuse example) -- to see if we get children early enough and for long enough in integrated settings that it will qualitatively affect both attitudes and achievement.

Rather than giving a lot of money initially, let's see what will work and then pour real money into those programs that will, rather than those that might. Moreover, since we know what does not work -- we've been doing that for years -- let's not pour more money into already misdirected channels or duplicate and reinforce weaknesses and abuses in current education spending which, under S3883, we will do.

WASHINGTON RESEARCH PROJECT ACTION COUNCIL,
Washington, D.C., June 4, 1970.

Memo to: Files.
From: Marian Edelman.
Re Emergency School Air Act of 1970—Senate bill 3883.

A great deal of skepticism prevails in the black community as to the true intent and possible impact of this legislation on school desegregation. In part this stems from the President's school desegregation message which most blacks viewed as not supportive of their aims and goals. In part it stems from lack of consultation by government officials of black people and others knowledgeable about school desegregation in the South in drafting the legislation and planning use of the money. In part also, it stems from past experience with other grant-in-aid programs—most particularly Titles I and IV—and the resulting abuse of these program monies as well as distrust in HEW's and this Administration's will and capability of truly enforce real desegregation. The fear is, then, that this money, particularly the first $150 million, is a political buy-off for the South which will receive the bulk of it without any controls or real benefit to the cause of desegregation. The burden rests on the Administration to show that this money is not simply going to be more of Title I and Title IV. In other words, how is this money going to be differently spent of effect *desegregation*, and not just be used by local school districts at will?

MAJOR QUESTIONS REMAIN TO BE ANSWERED

1. *Where is the money coming from?* I, along with several other civil rights people, have asked this question of staff on the Agnew Committee and HEW staff without receiving an answer. We are concerned that it not come from other programs for the poor and minorities such as Model Cities, OEO, Food Stamps, etc. It is not fair to make poor and minority children choose between a chance for a decent neighborhood, food, Headstart and non-discriminatory education.

2. *What is going to be the administrative structure which dispenses with the money?* Who specifically will approve applications? What will the mechanism be for dispensing the $150 million? The $1.35 billion? There is some indication that Title IV may be used to administer this money. The consensus of people knowledgeable about desegregation is that this would be extremely undesirable. The structure of Title IV (national, regional, and state centers) is extremely cumbersome and Title IV's reputation in dealing with desegregation is one of extreme conservatism. Title IV has proved in the black community's view to be a disaster, and to add to it additional money would not be in the interest of desegregation. Minimally, before any consideration is given to using Title IV as a vehicle, a thorough evaluation of its effectiveness should be conducted and assurances made that the problems in its administration and personnel can be corrected. There exists also the real question of the capability of Title IV staff to administer a new and much larger program. The Title IV budget is about $13 million. To take on immediately the additional burden of administering the $150 million during the summer and the larger sum when it is appropriated would require substantial additions and staff changes. Additionally, Title IV has few blacks employed at the regional and center levels (and some of those few that are employed are not respected in the black community), nor are most Title IV people specialists in school desegregation. A further argument against using existing agencies within HEW to administer the $150 million (or the larger sum) is that the lateness of the appropriations for HEW has resulted in a huge backup of funds in most programs, and in the processing of applications from states. It is unlikely that still another huge pot of money to administer can be efficiently done on top of all the other money that still remains to be dispensed. The same argument holds true for the states which will be receiving various sums of money through other education programs. It is questionable whether states will be able to come up with creative and effective plans in the time designated for obligation of the $150 million.

It appears, after lengthy discussions, that the best chance for effective administration of this money would be the establishment of a new unit within HEW, in the office of the Secretary, with direct responsibility to the Secretary, and with a new staff. In this way responsibility can be pinpointed. It should not be placed in the Bureau of Elementary and Secondary Education within the Office of Education in order to avoid the extra layer of bureaucracy.

3. *Is it possible to use the $150 million well between now and September 30, 1970?* The best estimates are that approval from the Congress of the $150 million will come by the end of June, if all goes well. That leaves three months to obligate the entire amount. I do not believe that an efficient structure and mechanism for processing applications or well thought out priorities can be devised within HEW in this short time. Moreover, it is highly questionable whether you will get any decent plans from states and a real danger exists of canned applications seeking to do the minimum to get the money. States are likely to do what they want to do—if Title I is any lesson—regardless of the project proposals which will be vaguely drawn. Worse, there is a real likelihood that the money will be used in the South to resegregate students within nominally desegregated schools.

What kind of regulations will be written for the $150 million and for the $1.35 billion? How soon? Will they build in safeguards against waste and abuse, especially in the South, and build in specific criteria for use of the money to discourage poor projects being submitted? Can guidelines be done well within the next few weeks in order to dispense with the money in the time allotted?

So far, I have been unable to get a clear indication of who has principal drafting authority for the guidelines and I certainly get no sense in discussing safeguards, that enough detailed thought has been given to these or to priority programs that ought to be supported and programs that ought to be avoided? A further technical question is whether the President has to sign the regulations (as they are referred to in the bill)? Will the government Interagency Committee have to pass on them? If so, what additional time requirements do these steps impose?

4. *It is unclear what the role (Section 7(a)(2)) of the state educational agency is regarding applications.* Will they have a veto? What specific role will the states have in dealing with this money? What is the structure at the state level that will relate to this money?

5. *Section 4(b)—What happens when local school districts come in with bad applications? Can the Secretary turn them down and reallocate the money to other states with worthy projects?* If districts in a state fail to meet the time deadline, say September 30, for the $150 million, in submitting applications, can the Secretary then reallocate money, to which that state would have been entitled, to other states that have submitted good applications?

6. *What evaluation of existing programs has been made in order to avoid the mistakes, waste and abuse that has occurred in the use of some of this money? What is working and what is not? What thoughtful consideration has gone into preventing the use of this money to duplicate other programs and how it will specifically relate to increasing and maintaining desegregation?* For instance, it seems foolhardy to talk about additional money to Title IV without having made an assessment of how Title IV has been working. Many of the authorized activities in Section 6 of this bill are activities that are already authorized in other education legislation. Has anybody looked at the other programs and Titles to see if they are effective? For instance, teacher training is supposed to be the main thrust of the Education Professions Development Act. What kind of training have they been conducting, and where? How effective has it been? How will the teacher training, if permitted under the Emergency School Aid Act, be different? This bill authorizes the purchase of equipment and renovation and mobile educational facilities. Anybody familiar with Title I knows that most Southern school districts and Northern school districts have bought massive amounts of equipment. Why should they be permitted still more under this Act. Further, there is no logical relationship between stocking equipment and making desegregation work. Such minimal expenditures for reorganizing facilities can be paid for out of local funds.

WHAT MUST BE DONE?

Minimal criteria should be drafted which would spell out which districts would be eligible for funds and which not to insure that priority will be given to those districts who will use it best based on a record of decent effort towards desegregation and to discourage recalcitrant districts from applying. This will also lessen the massive administrative burden of processing hundreds of project applications this summer.

The guidelines should exclude from funding:

a. School districts still operating under freedom of choice plans;

b. School districts where state and local fund allocations or millage have been lowered in the last two years (there is a trend toward this in the South with the increase of the private school movement and the use of federal money to supplant the lessened local support for public schools);

c. School districts in which there have been firings and demotions of black teachers and administrators, or which have imposed new teacher qualifications not heretofore required that have the result of forcing many black teachers out of the system;

d. School districts that have refused and/or failed to take advantage of federal programs designed to help the poor and minorities such as School Lunch, Title I, etc.;

e. School districts that are maintaining segregated classes within schools;

f. School districts which have instituted new procedures which have the effect of resegregating pupils (there are a substantial number of these school districts which have instituted tracking and/or sex separation as a result of desegregation orders, and which impose tuition fees heretofore not required which principally affect poor black pupils);

g. School districts with unupdated court order plans;

h. School districts in states which permit tax deductions to private school attendees;

i. School districts which have chosen sites for new school construction to perpetuate segregation;

j. School districts which have closed down acceptable black schools rather than send white pupils to them;

k. School districts which have transferred or sold equipment to private schools.

Authorized Activities in the Act: While not exclusive, Section 6 outlines certain things for which money can be used. Indeed, the way they are drawn up, they will be subject to abuse and to resegregation devices. Taking them one by one, many more specifics must be spelled out if the money is not to go down the drain or achieve the opposite purpose:

Section 6(a)—Provisions for additional personnel or other staff members and the training or retraining of staff. Titles I and IV have been doing this, as well as the Education Professions Development Act. The concept of training has been merely to have a few staff seminars by whites for whites which has made very little practical difference in understanding or improving the desegregation process. Secondly, there has been much evidence of use money simply to pay already existing teachers, giving them a different title, but little different function. Federal money has been used to equalize black teachers' salaries which is the states' burden (in other words, to supplant state money). I can think of very few needs for additional staff and professional members incident to desegregation, and such as they are should be specifically spelled out in order to ward off misuse:

(1) Community relations staff specifically designed to educate and help the community in planning and adjusting to desegregation.

(2) New bus drivers where additional busing is required under the desegregation plan.

(3) Teacher aides and transportation for these aides with the priority being given to placement of parents which would be an additional link of the community to the schools.

(4) Guidance counsellors that can specifically relate to the problems of black children in white schools, as there have been complaints from many black pupils about the harsh, insensitive treatment from white counsellors about their daily problems and career concerns.

(5) Hiring of special black studies professors or those capable of teaching black history, etc., which does not now exist in white schools.

(6) Later on in this paper is a strong recommendation for the establishment of bi-racial community committees that would help plan and approve applications and monitor and evaluate the use of this money. One would like to see these committees with staffs so that they can be truly effective.

(7) There are more than 200 school districts not in compliance which have been operating for years without federal funds. The lack of resources in the private sector and the lack of capability or the unwillingness of the Justice Department to take action against these districts results in the perpetuation of segregated school systems affecting thousands of children. These districts should be desegregated forthwith and a mechanism should be worked out and/or a percentage of the money set aside for either appointing

counsel or providing subsidies for private lawyers or legal services to bring desegregation suits in these noncomplying districts.

Section 6(b)—"Remedial and other services to meet the special needs of children in schools . . . including special services for gifted and talented children in such schools." This is nothing more than an invitation to use federal money to pay for testing and tracking, and therefore resegregation. Moreover, there is Title I which is supposed to provide remedial help for minorities and poor children. The only use for which I would allow money to be dispensed under this section would be to hire after-school tutors, perhaps parents or other students, to help those who need it. (Note Edgeville, S.C., tracking plan and their anticipation of the use of this money in furtherance of such plan.)

Section 6(c)—In addition to the guidance counsellors mentioned above, one of the great needs is for student support activities. Conversations with black students from various parts of the South indicate that much of the disruption and possible violence this fall will come from the failure of school systems to encompass blacks in their concept of integration, i.e., to understand that blacks are no longer willing to come to white schools solely on white terms or to view them as "white schools." These children are concerned about maintaining their identity and gaining respect for what they are in their new environment. They want to be free to wear Afro hair-dos and dashikis, to participate in extra-curricula activities fully, to have a fair chance in homecoming elections, have a chance to participate in student government elections and have them reflect their presence, and not have these elections conducted the year before, etc. There is no greater need than to have fair grievance procedures that these students can relate to. More than 300 black children, and unfortunately some of them the most bright and imaginative, have been expelled from schools on issues such as these in the last year and have remained out of school. This should be avoided at all costs. Fairness must prevail, and the special needs and growing militancy of black and Chicano students must be recognized and responded to. Moreover, extra support for black-white student activities in an effort to get them to know each other better must be devised and supported where possible. If students could be brought together during the summer to discuss expectations and potential problems, it would be very worthwhile.

Section 6(d)—I am unclear as to what this section means, but hope that the kinds of projects permitted would be limited to rewriting textbooks that would fairly reflect the history and status of blacks, providing books on black history, black art, poetry, etc. (even though this is what Title II can theoretically do). The purchase of audio-visual equipment, etc., bears no real relationship to desegregation and many school districts stocked up on this with Title I money anyway.

Section 6(e)—I am skeptical about this section and whether anything really imaginative will come out of it, but I assume what is meant is the Coleman idea of multi-site activities and the possible establishment of joint cultural and physical education programs, which children from all schools could attend. One should caution against these becoming the ends and used instead of reorganizing school systems, where possible, to permanently desegregate.

Section 6(f)—I would delete this section completely. If one can't delete it, then one should limit it to a very small percentage outlay (less than 5%). (The Southern interpretation of 'remodeling' has recently meant building fences around all black schools to keep white children assigned to black schools out of black neighborhoods, and painting bathrooms in black schools to make them more acceptable to whites.) I believe that expenses of renovation incident to desegregation are few and that local school districts can and should meet expenses for the very minor alterations that would come in the normal course of business. Mobile classrooms are hated in the black community because what they reflect are temporary and substandard additions to white schools which are overcrowded because of the failure and refusal by some school officials to assign white pupils to adequate black school buildings. So they close good black schools and put black children in mobile classroom units at the overcrowded white schools.

It is unclear whether or not construction is permitted under this Act. While it is not specifically mentioned, it is nowhere specifically forbidden, and it is strongly urged that not one nickel be given for construction. Title I money has been heavily used in some cases towards constructing new facilities to equalize black facilities with white ones and therefore perpetuate segregation.

Section 6(g)—Discussions reflect that we could live with this provision, but not with the original Administration's busing provision, which would not only cut out, as we read it, the voluntary efforts of busing to overcome racial imbalance, but may not permit money for busing in situations such as Los Angeles. (Unless an educational purpose would be served?! Imagine the confusion this will bring!)

Section 6(h)—This should be spelled out in very specific terms, and I would hope it would mean primarily that nonprofit groups from the Jackson white mothers who organized in 1964 to save the public schools to black groups involved in desegregation efforts, would be fundable under this provision. And it would be helpful if PTA's, which have been considerably weakened since desegregation, could be revitalized.

Section 6(i)—I don't know what "special administrative activities such as rescheduling of students or teachers" means, and I would strike it. The only possibility I can think of would be when there is large scale desegregation in the middle of the year such as occurred in January in districts affected by the *Alexander* v. *Holmes* decree, and it is unlikely that this will occur again. It is interesting to note that the local school boards managed to do it without federal help, and I would leave it that way.

Section 6(j) and *(k)*—I don't say much and should be spelled out in specifics, and I would remove k completely or give specific indications of the kinds of programs that the Secretary thinks would meet the purposes of this Act such as the creation of educational parks or inter-district funding, i.e., predominantly black and white districts working out cooperative arrangements.

A strong and mandatory provision should be included in the Act for the creation of bi-racial committees elected by the respective communities to be involved in the planning and approval, monitoring and evaluation of these applications and the expenditure of the money. Such a structure is our best hope for effectiveness. Title I has a provision for advisory committees, but it has not been well enforced. Moreover, many courts are appointing bi-racial committees to oversee school desegregation plans.

In addition, a strong public information requirement should be built in which would insure that the applications are open to the community, and simple appeals procedures should be built in to allow community people to protest bad and inadequate plans or failure to spend money as approved. Cutoff provisions of district funds should be written into the guidelines where school districts fail to carry out the approved projects or to conform with the law.

Finally, there should be a reporting requirement that local school districts shall report on the operation of projects and the progress of these projects in furthering desegregation to HEW and to the appropriate committee of Congress.

A few final comments: The thrust of criteria should not be to reward those who have resisted and penalize those who have attempted to comply in good faith. School districts that have voluntarily desegregated should have pupils doublecounted as well as others.

It may be said that little of what has been stated here is new. Maybe. But it has not been done and other similar program criteria contained in Title I and IV guidelines have been weakly, if at all enforced. One need only look at the practices. Many of the prohibitions stated here are not specifically prohibited elsewhere. Since this is new money, supposedly dedicated to pushing desegregation, it should get off to as good, as strong, and as clear a start as possible. That is, if people are serious about achieving something real.

Senator **Pell**. The final witness is Miss Frances Sussna, director of the Multi-Culture Institute in San Francisco, Calif.

Senator Murphy, a member of this subcommittee and the full committee, warmly recommended you to us and asked that we hear your testimony.

STATEMENT OF FRANCES SUSSNA, DIRECTOR, MULTI-CULTURE INSTITUTE, SAN FRANCISCO, CALIF.

Miss **Sussna**. Thank you.

I am very grateful for the opportunity to appear today. I want to talk specifically about the features of the bill that provide funds for "new instructional techniques and materials designed to meet the needs of racially isolated schoolchildren" and for "special programs or projects designed to enhance the possibilities of successful desegregation."

I would like to urge you and all who are concerned with desegregation to consider the question: "What is successful desegregation?". I believe it is more than getting children of different races to sit next to one another. I believe that truly successful and meaningful school integration must have as a major component methods for causing children to relate to their own ethnic identities and to those of the other children in ways which will benefit and enrich, rather than endanger, them and their communities.

In the past, educational institutions have often assumed that the most useful way in which to encourage "Americanism" is to ignore racial and ethnic distinctions, submerging them in an undifferentiated general curriculum.

There is an implication that the American ideal required us to strive to be "more American" by losing anything which distinguishes us from a nondescript fictional prototype. This concept is disparaging and detrimental to Americans who do have names, family backgrounds, group associations, and other characteristics of real people.

Since a major key to every individual's behavior is his self-image, society cannot afford to ignore an aspect of that image which may be of great importance in the child's mind.

Whether we like it or not, every child defines himself partially in relation to his racial or ethnic group and also defines that group in relation to the composite American scene. Without public involvement, that definition will continue to be acquired on the streets, and may be inaccurate and unwholesome.

Although we cannot prevent any child from exploring his identity, we can and usually do deprive him of the tools for exploring it positively and realistically. This unrealistic approach has deepened feelings of alienation and produced youngsters who have deficient understandings of themselves and others.

A child knows if he is different in the national origin of his parents, their religious affiliation, or the color of their skin. If he is taught, explicitly or implicitly, that the less said about this the better, the effects will be confusion, low self-esteem, and bitterness for the "different" children, and a false sense of superiority for the other children.

It has too often been assumed that proximity of different groups to one another will automatically result in intergroup understanding. Very often, it does not.

At present, children can and do go through 12 or more years of typical schooling—whether in segregated or integrated classes—and come out totally unlearned in intergroup relations—in either information or attitudes.

Desegregation alone is insufficient to prevent the racial and ethnic distinctions from being used as barriers against intellectual and social communication.

Efforts to end school segregation are meeting with increasing success. But if we end our efforts here, will we have achieved a real integration? The children are segregated on the very buses that carry them to their "integrated" schools. And these children, who have not learned to place a positive value on either their own "differentness" or that of others, maintain a most effective segregation within the school building, within the classrooms where we have placed them in supposed proximity.

Middle-class parents watch with great concern to see if school standards will suffer from the influx of ghetto children. We have promised that they will not. But what in fact does happen when these "different" children bring their feelings of shame, alienation, futility, and rootlessness with them to the shiny school building? Can integration make good its promise without major changes not in the composition, but also in the orientation of schools?

And what do we do about the prejudiced teachers that the child often finds even in the integrated school? Many teachers believe that children of certain groups are inherently inadequate both in intelligence and character. If the teacher believes the child is inadequate, no matter what he may say, he will succeed in conveying that idea to the child or the other children. New methods have to be found of dealing successfully with all of these situations and these methods have to be tried in experimental settings.

I wish to describe one such experimental program, the multiculture project, which I think has demonstrated the exciting possibilities that exist for true quality integrated education.

In order to bring about a more meaningful form of integration, the program does something which at first seems very paradoxical. The Multi-Culture Institute intentionally separates children a portion of each day to allow each ethnic group an in-depth study of its own ethnic heritage. Shocking as this may be to some, it is precisely what many of the older children are doing on their own initiative in ever-increasing numbers throughout the country.

The tragedy is that they are doing it with little or no involvement of the schools, and thus without the information and mature thinking that well-prepared teachers could bring to the groups.

The idea of separation is startling at first to some observers, but usually only at first. After all, in any school where a variety of languages are taught we separate children for certain periods of the day according to the language they are studying. As a practical matter, we cannot teach Mandarin, Spanish, and so forth to different children in the same room at the same time.

Further, for many groups there is great value in the opportunity to talk with teachers and children of their own ethnic group "among ourselves about ourselves" and to examine their relationship with others.

For the child to whom his ethnic identity may be more remote, such as a third-generation American of mixed Western European origin, an in-depth study of one of these languages and cultures such as French, may not be as crucial to his self image and ability to achieve as it is for the child for whom ethnicity is a dominant factor. However, this child's education can be greatly enriched by such study, and it will also help him to acquire the concept of the plurality of America in a most positive way.

Wealthy families have always attempted to give their children the benefit of an at-homeness in another language and culture, often by sending them to foreign schools for part of their studies.

Some have argued that we should teach equally about all cultures. Amid the present demands by so many ethnic groups for ethnic studies, one State board of education has responded by urging schools to give the various minority groups "space and treatment commensurate with their contributions". But who is to decide how much "space and treatment" each ethnic group merits?

Another approach has been to suggest giving a small but equal amount of time to "every ethnic group"—and a very small time, indeed, it would have to be.

It is as if we were to say in California, for example, that instead of giving children, throughout the fourth grade, a study of the history, geography and government of California, we would divide the year equally among the 50 States. At the end of the year the children would probably know almost nothing about any of the States. But by giving them an in-depth study of one State—and very logically the one in which they happen to be living—we give them a frame of reference with which to understand the history, geography, and government of any of the others.

Just as the community endeavors to provide important affective and cognitive learnings relevant to the individual's identity as an "American," a "Californian," a "San Franciscan," the Multi-Culture Institute provides similar learnings for other important aspects of his identity, and by so doing, legitimatizes these identities in the minds of all.

The four ethnic groups with the greatest representation at the Multi-Culture Institute are Latin-American, black, Chinese, and Jewish. The children are fully integrated in the morning for an excellent program of general studies—which also provides special help in English for those needing it—and separated in the afternoon for a study of their diverse ethnic languages and cultures. In a third element, each ethnic group prepares a program to introduce the others in a positive and exciting way to its own culture.

We are not concerned with measuring one group against another. We are concerned with the children's comprehending that every group—like every person—is special and important and has its own beauty. Further, that all Americans can and should be enriched by this diversity.

The model program has been extremely successful and has drawn the praise of both expert and lay observers. These have included teachers and parents and educators from many different cities including officials of the U.S. Office of Education, civil rights groups, and from all of the ethnic groups that are involved.

A recent visitor from the Ford Foundation after observing the children in their classrooms, on the playground, and in the lunchroom, said: "We have been talking for a long time about something called quality integrated education. Here, at last, is quality integrated education."

We, too, have been thrilled at the results. The children have developed a special love for and pride in their own separate cultures (and, therefore, in themselves and their families), but without any narrowness. They are deeply aware of the many other groups that make up America and are acquiring a wonderful "feeling" for them—an ability to get along with all people. And, interestingly enough, we see indications that their growing appreciation of self and others tends to "rub off" onto their parents.

I would hope that sometime the members of this committee could also see the program in operation.

Before concluding, I should like to comment on the fact that the bill permits assistance to private as well as public institutions.

I would, of course, agree with Mrs. Edelman's opposition to the funding of private schools which perpetuate segregation. Many private schools are committed to combating discrimination in all forms. At the same time, new kinds of programs often have to be tried first in private schools.

The multiculture project was so much a departure from present practice that it would not have been done initially in the public schools. But now, having demonstrated its worth under independent, nonprofit enterprises, it is drawing increasing attention from public and parochial school teachers and administrators, many of whom have asked our help in training their personnel in this approach.

I would hope that the bill under discussion would make it possible for this much-needed program to be brought to the attention of school systems throughout the country and provide an opportunity for the institute to respond to those systems which are requesting assistance in beginning programs based on this model.

I would like to submit for the record, with your permission, three items:

(*a*) A list of the concepts around which the multiculture institute's curriculum is being developed;

(*b*) A reprint of a Reader's Digest article called "A Black Man Looks at Black Racism," in which Supervisor Terry A. Francois, president of the board of trustees, describes what this kind of program could do to reduce black racism and white racism;

(*c*) And a reprint of a statement in the Reconstructionist by Rabbi Arthur Abrams of Berkeley.

(The information follows:)

SOME CONCEPTS OF A MULTI-CULTURE CURRICULUM

by Frances Sussna

People are Different

1. The United States is a "nation of immigrants."
2. We have all benefited from the rich diversity of our population.
3. "Different" does not in itself imply "better" or "worse."

People are the Same

1. There is an overriding "humanity" which unites all mankind regardless of differences.
2. People of all groups have the same basic physical needs (e.g. food, shelter) and the same basic emotional and spiritual needs (e.g. freedom, security, dignity, achievement).

People are Individuals

1. The concepts of "collective guilt" and "collective punishment" have wrought much harm throughout history and still pose dangers.
2. Every individual should be judged on his individual merits, rather than be prejudged as a member of "natural" groups (i.e. various groups and associations he was born into.)
3. It is important to be able to judge which are situations in which a person's ethnic background is legitimately a fact to be considered, e.g. hiring waiters for restaurants with French or Japanese decor.

Ethnic Groups are Different

1. Each culture is unique, special and important just as each individual is unique, special and important.
2. The world is made up of thousands of cultures, each with its own special beauty.
3. It is exciting to become acquainted with many cultures.

Ethnic Groups are the Same

1. Within the history of every group we can find some examples which conform to our present standards of ethics and some which do not, e.g. where men of one group have benefited or oppressed other men.
2. Every ethnic group has benefited from contributions of persons who are not members of that group.
3. People of each group have overcome great obstacles.
4. There are valuable learnings to be gained from each group.
5. Some degree of ethnocentrism continues to be found in all groups.
6. Ethnocentrism has both positive and negative aspects.

The Future

1. Each group has an evolving identity.
2. Every individual in that group has some influence on the evolving group identity.
3. Group histories, like personal histories, can always be built upon for better tomorrows.

Empathy

1. The feelings and sensitivities of others are to be respected even if not always understood.
2. A just person takes as much care to avoid wounding another's feelings as to avoid wounding another's body.
3. The ability to imagine yourself "in someone else's place" is an important skill, to be developed through role playing and other techniques.
4. It is sometimes good manners to comment favorably to a person on achievements of any group of which he is a member, although we would not blame him for what we may consider that group's "failings."

5. Facts that may not be complimentary to a particular group need not be ignored.
    a. However, they should be viewed in the context of all related facts rather than in isolation.
    b. They should not be used in such a way as to hurt the feelings of anyone, or to deny him his rights.
6. A group's freedom to act for its own benefit, like an individual's freedom, ends at the point where somebody else's nose begins.
7. Hurting others in order to advance is neither necessary nor desirable.
8. On the contrary, development of compassion and concern for others enhances personal growth.

Intergroup Relations

1. Building positive relations among individuals and groups--whether similar or different--is a constant challenge.
    a. Intergroup--and other human relations--have posed challenges in every country and at every time.
2. Society is still groping for adequate ways of meeting these challenges. Each individual has the opportunity to make a contribution in this area.
3. Critical and creative thinking can and has solved problems that seemed insoluble.
4. Awareness of economic, social, political, and other factors (both historical and current) is necessary in order to understand intergroup hostilities and violence.
5. The rapidly growing body of knowledge of the behavioral sciences also provides insights useful for human relations problems.
6. Knowledgeable communication among groups is very important, and increasingly so.
7. Intellectual and social relationships across group lines are healthy and desirable.

8. Those who attempt to isolate themselves from members of other groups will find this increasingly difficult in contemporary society.
    a. Those who succeed will be depriving themselves of certain kinds of personal growth.

Racism

1. Not only people we may think of as being malicious, but also our own friends, families, and teachers--and we ourselves--have a legacy of prejudice (and often hostilities within ourselves) to overcome.
2. It is important to understand this legacy and to recognize its manifestations, the better to deal with them.
3. Every individual encounters people who have such hostilities and may be a victim of them in one way or another.
4. This can and does go in any direction. The sensitive white person, for example, may be hurt by the non-white who says that "all whites are basically lacking in compassion."
5. Racism is just as wrong, though perhaps more understandable, when it comes from persons who have been its victims.
6. We must learn how to deal with these incidents on an individual basis, to protect ourselves from pain and/or harm, and if possible, to enlighten the hostile person.
7. Society must learn how to deal with them on a community basis.
8. Respectful behavior toward our teachers is necessary and desirable. This does not mean that we should believe or adopt the attitudes of teachers--or anyone else--who may refuse to recognize us or others as important and worthwhile individuals.

Knowing Yourself

1. Self-respect and self-love are not "selfish" in a negative sense, but normal and healthy. We should be able to maintain this respect and love, while squarely facing and trying to correct shortcomings.

2. Increasing self-knowledge and self-understanding should be life-long goals.

3. Respect for the groups we belong to is also desirable and will help toward another important goal: understanding and respect for other groups and the relation of their members to them.

4. The history and culture of our ethnic forefathers have contributed to making us the kinds of people we are.

5. Language learning contributes to the understanding of a culture.

6. There is beauty in tradition.

7. Important ideas can be derived from the holidays, rituals, and proverbs of each group.

8. The myths and legends of each group have a value in that they are enjoyable for study and give insights into the group, whether or not we choose to "follow" or believe them.

9. The individual who has knowledge of and familiarity with many aspects of his group is in a position to choose wisely those group traditions appropriate to his own life.

10. It is possible to be a valuable member of the general society while being a knowledgeable and active member of one's own group.

11. Older people in many families (in some cases including our own parents) may lack the advantages of education we have. This is not uncommon, and does not reflect upon other qualities they may have.
    a. A value common to all groups is respectful behavior toward our elders.

12. Each individual is special and important and may have ideas and talents to contribute. This includes children, even though it is possible that some adults may fail to recognize this.

13. The individual can choose to adapt to the practices of his own life those cultural traditions and expressions of his group he considers most appropriate for himself and can also adopt cultural expressions of other groups that may suit his personality and values.

Many of the foregoing concepts can and should be used by the teacher to inspire every child with the knowledge that he affects both the character and destiny of each group to which he belongs and of society at large; that he cannot choose whether or not to affect them but only how he affects them; and that this is true to some extent even while he is a child.

* * * * * * * * * * *

In general, teachers should seek to:

1. take account of current developments in educational research and adapt this information to school practices;
2. stimulate a genuine interest in an enjoyment of learning, minimizing artifical rewards and punishments;
3. sharpen ability to think creatively and objectively;
4. provide for individual differences and encourage individual expression and development; and
5. further all aspects of the child's development as both a happy and socially responsible person;

and to impart to the children:

1. enjoyable experiences with the group identification; a "good feeling" about being part of that group;
2. a realistic grasp of the group's common past and present, and its potential for contributing to society as a whole;
3. development of useful and creative tools for further "self-definition" and exploration of their past.

A Reader's Digest

REPRINT

A
Black Man Looks at Black Racism

By Terry A. Francois

The Reader's Digest
PLEASANTVILLE, NEW YORK 10570

Says the author: "Anyone who has been involved in the struggle for an integrated America knows that it takes a certain amount of courage to stand up to the white man's racism. But after 25 years of this struggle I have come to see that it may take an even higher courage for the black community to stand up to—and to fight—racism among blacks"

A Black Man Looks at Black Racism

By Terry A. Francois

2

Tim Peebles was 17 when he graduated from a California high school two summers ago. He was bright, well liked and active in student affairs. For four years Tim, a Negro, had been on the school Inter-Racial Council, and in a commencement speech he said that all of us, black and white, must learn to get along and communicate with one another.

But, after Tim enrolled at San Francisco State College, somebody taught him to hate. He became a "brother" in the Black Students Union, which preaches hostility to

---

Long active in the fight for civil rights, Terry A. Francois initiated the lawsuit in 1952 which resulted in the U.S. Supreme Court decision outlawing deliberate segregation in public housing. In 1964, he was the first black man to gain a seat on the San Francisco Board of Supervisors.

the white man for creating a "racist, oppressive society." Last winter, BSU led a student strike, and for four months there were violent confrontations between black students and white authorities. On March 5, the revolutionary rage engulfed Tim Peebles. Police charge that he and another student, William Pulliam, exploded a time bomb in the school's Creative Arts Building. When it apparently exploded prematurely, Tim was all but blinded and his hands were maimed. He was found drenched in blood, reportedly screaming, "Where is William? I gotta get out of here. . . ."

As the story of Tim—crippled for life—shows, racism now comes in two colors: white *and* black. Black racism is much less recognized, or understood, but it is just as reprehensible, sterile and cowardly as white racism. Unless we blacks face this now, and come to grips with its terrible implications, we are going to see the tragedy of Tim Peebles repeated in a hundred different ways in a hundred different cities.

The Violent Ones. What is black racism? It is:

- Harry Edwards, organizer of last year's abortive boycott by black U.S. Olympic team athletes, telling a symposium at the University of Missouri-Kansas City that blacks should order the white businessman out of the ghetto, and that "if he doesn't understand, burn him out, kill him, murder him."
- The reign of terror visited upon a San Francisco State College teacher, Dr. John Bunzel, who questioned the militants' insistence that only blacks should teach black studies—then found a bomb left outside his office door, his cars disabled, and his classroom disrupted time after time by shouting radicals.
- Rioting black students threatening to rock-bomb a Chicago school bus last spring—for no other reason than that the driver and the young passengers were white. It took a phalanx of helmeted police to rescue the bus and its occupants.
- A gang of black youths brutally beating a white boy last February because he had dared to play baseball on a San Francisco public playground that the gang had decreed was for blacks only.

"Whitey" is held by the strident voices of black racism to be the universal, automatic enemy, to be opposed on all fronts, at all times, at all costs. *Only* black is good; white is *always* bad. On the basis of color alone, black extremists reject other Americans of goodwill.

Sometimes this racism commands blacks to "return," at least in spirit, to Africa. In Los Angeles, Ron Karenga directs members of his black-community organization—named, simply, US—to assume African surnames, learn Swahili, wear African-style clothes. When the Detroit-based Republic of New Africa (RNA) was formed last year from a number of radical black groups, its leaders demanded that the State Department give it $400 billion in reparations for "labor stolen during slavery and damages suffered by blacks from racial discrimination," and also turn over Alabama, Georgia, Louisiana, Mississippi and South Carolina to RNA to become a new "African" nation. Members pay an income tax to support a paramilitary force—the Black Legion—for "defense" against white resistance to RNA's secessionist goals.

Increasingly, there is talk of the supposed inevitability of armed confrontation of blacks and whites. The Black Panthers, another revolutionary group, openly say that "when the people move for liberation, they must have the basic tool of liberation—the gun." In New York, 21 Panthers are under indictment on charges of plotting to kill policemen and to dynamite five stores during the Easter shopping crush.

This militancy feeds on white racism's historical oppressions. There have been advances, but as late as 1968 the Kerner Commission report on civil disorders warned that white racism was continuing to split our country into white and black worlds, increasingly separate, increasingly unequal. One year later, a study sponsored by the Urban Coalition and Urban America, Inc., told us that the status was mostly unchanged. Every day that goes by without a reordering of our national priorities to mount a massive effort at solving the ghettos' housing, employment and educational problems gives the black racists that much more apparent plausibility in preaching their hatred of whites.

The Widening Gulf. Even so, I am convinced that as of now the majority of adult black Americans do not lean toward racism. Rather, the real threat comes from the appeal of black racism to young blacks like Tim Peebles. My own experience with students—notably at San Francisco State—is a case in point.

During the 1950s and the early 1960s, when I was a leader in the San Francisco branch of the National Association for the Advancement of Colored People, black students frequently invited me to their campuses. There was nothing we couldn't debate. But, beginning in 1964, I saw changes in the students' attitudes. Increasingly, the blacks said that whites could never be trusted, were only interested in suppressing blacks—and had to be fought.

I came to feel that many of those who invited me to their meetings were no longer interested in listening to arguments in favor of integration. It was impossible to challenge anything they said without being called an Uncle Tom. All who opposed the new militancy were vilified as "Oreos"—like the cookie, dark on the outside but white inside.

In the fall of 1968, the militants at San Francisco State put forward 15 demands. These included an autonomous black-studies department, "open admission" for any black student regardless of qualifications, and the rehiring of a temporarily suspended teacher who was a Black Panther. I asked their leaders which of the 15 demands were subject to bargaining. "None," I was told. "Every one is totally non-negotiable." They were not interested in working out an accommodation with the college; their goal, instead, seemed to be to provoke conflict by insisting on total surrender.

And so violence came. There were almost daily clashes with police, more than 600 arrests—and nine bombings. The tenth was the one that exploded on Tim Peebles. More than anything else, that seemed to shock our community; soon afterward, a bargaining committee, of which I was a member, brought about a compromise that all parts of the university could agree on.

Pride Perverted. If you analyze that confrontation, you see how black racism perverted what began as an eminently healthy development in this country—the birth of black pride. I welcome that prideful black consciousness, because without it there can be no true integration. As a leading psychiatrist put it, "Before you can integrate, you need an *identity* to integrate." But once you've said that black is beautiful, what then?

How does that slogan help a youngster who is flunking out of school? What good is that slogan to the young men on the street corners who are out of work? Here, then, lies the real indictment of black racists: They find it easier to curse Whitey than to face the tough fact that to take a meaningful place in America the young black has got to learn to do something that society needs and is willing to pay for. When black racists reject this simple truth, saying instead that color alone gives a man dignity, they are running away from the great challenge of creating a single America in which people of all colors have equal opportunities to live, work and play.

True, achieving that goal will be tough and demanding. It will require the white community to make a far greater adjustment than it has yet made to the needs of the black world. But it will also require blacks to understand that it is no longer enough merely to protest past indignities or to assert an air of superiority. If black people embrace separatism, as psychologist Kenneth Clark has made so clear, they will achieve by their own actions what white segregationists have never been able to accomplish: a society defined and structured by race alone, with the minorities sealed off in ghettos of hate as well as color.

Reason's Course. The real issue now is: How do you motivate people who are out of the mainstream to try to lead productive lives? How do you equip them with the pride and courage to compete for a meaningful place in the world?

For the black man there is only one permanent solution: realistic, humanitarian education. In San Francisco, I believe that we are pioneering a way to accomplish that. We call it the Multi-Culture Institute, a new kind of school based on the idea that the first responsibility of any individual is to find out *who* he is, and then to accept himself for *what* he is.

The reason public education has so failed our black youth is that it never understood how the Negro child's emotional problems about his color interfere with his ability to learn. The white world relies on the family as the vehicle for transmitting to the young its goals, aspirations and a sense of achievement. But for blacks slavery destroyed the institution of the family, a disaster that we are still trying to recover from. Many black families in our urban ghettos are so chopped up that they cannot be counted upon to convey dignity, hope and reason to their children. As a result, the black child often comes to school with no positive self-image, no idea that it can be *nice* to be black, no appreciation of his black culture. The inevitable consequence is a severe motivational block; he sees no reason to pursue education because it is basically so irrelevant to him.

When the Multi-Culture Institute opens this fall, over 150 youngsters from various ethnic groups will be accepted for kindergarten and the lower grades. The children will learn their academic subjects together. But at certain periods they will be separated on the basis of ethnic background to allow them time to learn about themselves, and to examine their relationships to others, all under the guidance of trained teachers. At other times they will assemble in combined classes so that each group can teach the others about itself.

My first reaction to these ideas was negative. All my mature years I have worked for an integrated America, and these ideas seemed contradictory to that ideal. But I came to see that this program envisioned a more realistic form of integration than we had contemplated. Learning positively about themselves and their heritage will enable black youngsters to go into the world with a secure identity and motivation to achieve. Is this teaching personal and racial pride? Certainly—but a constructive pride that causes one to respect the distinctiveness of others, as well as of himself. And we hope that we will demonstrate how our approach is adaptable to public schools everywhere.

To me, this is the course of reason. In these troubled days, when passions run high and frustrations abound, what real power we black people can muster—as a minority—must be coupled with the utmost in good judgment, or else we shall surely perish in disarray.

Reprints of this article are available. Prices, postpaid to one address: 10—50¢; 50—$2; 100—$3.50; 500—$12.50; 1000—$18. Address Reprint Editor, The Reader's Digest, Pleasantville, N.Y. 10570

REPRINTED FROM THE SEPTEMBER 1969 ISSUE OF THE READER'S DIGEST
©1969 THE READER'S DIGEST ASSOCIATION, INC., PLEASANTVILLE, N.Y. 10570 PRINTED IN U.S.A.

A PLURALISTIC DAY SCHOOL

(Reprint of a letter to the Editor of Reconstructionist, May 29, 1970)

To the editor: It is ironic that your article: "Proposal For a Pluralistic Day School" March 27, 1970, should have arrived just the same week that I visited a unique experiment in education called the "Multi-Cultural Institute" in San Francisco. This non-profit school provides an opportunity for a heterogeneous grouping of children to learn together in an integrated setting, and also to gain awareness of ethnic identification.

The school, which is housed in a complex of buildings which used to be a Jewish orphanage, was founded by Frances Sussna, who once directed the Brandeis Day School in San Francisco. In my interview with her, she explained the aims and goals of her school, which included the preservation of the ethnic identity of Black, Jewish, Chinese, Japanese, and Mexican-American children by treating them both as members of the larger society and of their specific ethnic groups.

How fascinating! Here is an answer to the problem of living in pluralistic America as American and Jew, American and Black, etc. This program has tremendous possibilities for creating a whole new concept in public school education.

I visited the classes. In the morning the children, all of young elementary ages, were grouped together for instruction in general studies. There was plenty of interaction. After lunch the groupings went according to ethnic identification. One class for the Chinese children was being conducted in Chinese. The room reflected the heritage of China. A Nationalist Chinese Flag hung on the wall. Another class for the Black students was having a lesson in Swahili. A Jewish ethnic class was preparing a play "Simple Simon Says" in Hebrew. The room was decorated with symbols of Jewish Holidays and of Israel. It was like our week-day afternoon Hebrew Schools, only more so.

I discovered that the children not only became more aware of the poetry, literature, language and history of their own heritage, but also learned to share the culture of others and to appreciate a pluralistic approach to American culture and history. No longer were they shy about their own identity, but also felt more natural about Blacks, Jews, Mexicans, etc.

The "Multi-Culture" Institute is drawing considerable attention in the Bay Area from school districts which are looking for new ways to cope more successfully with a multiculture approach to learning. This idea may revolutionize education in America. Instead of largely ignoring ethnic contributions in our schools, there would be an emphsis placed upon group identifications and recognition of the role of minorities in a pluralistic society. The possibilities are unlimited.

Our Jewishness would be a part of our educational experiences in public school. No longer would we feel that Jewish Culture is secondary to general American Culture. Our children as well as parents would feel a new sense of awareness and pride in their identification. As Miss Sussna pointed out: "We should feel a sense of belonging to a group which in no way means chauvinism. Our group is not better than the other, but does recognize the multi-cultural nature of America."

This approach, I feel, may be the answer to future directions in Jewish education as well as general education and may ultimately, if used, develop a much more aware, knowledgeable, and committed community of American Jews, in a society of many ethnic groups. This may be the answer to some of the dilemmas of race relations in America.

(RABBI) ARTHUR J. ABRAMS, *Berkeley*.

Miss SUSSNA. This approach may be the answer to ending racism in America. I don't know if it is the answer. I feel it is an answer and again I feel that attention has to be drawn to this kind of activity.

Thank you.

Senator PELL. Thank you very much indeed.

NECESSITY OF LEGISLATION

In general, then, as far as this bill goes, you would be in favor of its passage with the appropriate safeguards?

Miss SUSSNA. I would not feel prepared at this time to express a judgment on the bill as a whole.

My particular interest in the bill was to point out the possibility of its encouraging integration efforts beyond the mere placing of bodies in proximity. There are still far too many people who believe that once we get people together the proximity alone will teach them to love one another. It may not. It may even reinforce their hatred.

I went to a junior high school which had a significant number of blacks and there was no communication whatsoever. There was a kind of covert racism that came from the teachers that left its mark on those children.

I went to a senior high school composed of Christians and Jews, 2,000 Jews and 2,000 Christians. You may remember in Philadelphia in 1953 when there was a series of bombings of synagogues. The FBI found that students from that high school were in a Nazi movement and had perpetrated the bombings.

They were "ideally" mixed, one Christian to one Jew, and there was no communication. The Jewish children were, for their part, insensitive about some of the religious feelings of the Christians.

I think a higher form of integration can result from a positive kind of attention to the ethnic identity in contrast to the unrealistic teaching that we are all the same. We are not all the same; we don't want to all be the same. We are the same in certain basic ways and the child learns that. That is, we all need adequate housing, food, love and recognition, but we don't all have the same kinds of cultural attributes and thank God we don't.

Children can learn to place a positive value on this differentness. I can see it happening at the multiculture institute every day.

Senator PELL. Thank you. Perhaps you could submit for the record some material which distills your own experience in this area and your thoughts with regard to curriculum. I think it would help us if we had that in writing from you at some point.

I was struck also by your point about the importance of bona fide private schools. I hope that in the sense of aggravation we are experiencing due to those private schools that are being set up for wrong purposes, that we don't lash out at the bona fide private institutions which in some cases have actually been out in front on this problem.

Thank you. Senator Mondale?

Senator MONDALE. Your last observation raises an issue we must face squarely. If we had the time, I think it might be valuable to this committee to hear from some of the top national private school leaders about their role in these pressing educational problems and how this bill might be shaped.

Miss **Sussna**. Yes, it does. I had a particular reference to section 5 of the bill.

We have viewed the whole role of private schools in a negative sense and their positive aspects ought to be brought into focus here as well, I would think.

Senator **Pell**. I think it is a good thought.

Senator **Mondale**. In fact, a bona fide private school, of course, merits tax exemption and some of them are actively pursuing integration as yours are. They are really trying to help the problem. However, others unfortunately are providing an escape from the public school system.

Miss **Sussna**. The Multi-Culture Institute's program has gotten unanimously favorable reaction from all who have examined the program. Yet, it never could have been tried initially in the public school, before getting these evaluations.

Senator **Mondale**. What is the name of your school?

Miss **Sussna**. The Multi-Culture Institute.

Senator **Mondale**. How many children attend?

Miss **Sussna**. We have 150 children.

Senator **Mondale**. What is the racial mix?

Miss **Sussna**. We want to have a larger number of ethnic groups, but present funds have been adequate for only four groups, for which we can have separate classes—black, Chinese, Latin American, and Jewish.

Senator **Mondale**. What percentage?

Miss **Sussna**. Pretty even. Slightly more black than any single other group.

Senator **Mondale**. What about the economic breakdown? Mostly middle class?

Miss **Sussna**. There is quite a range. We had occasion to examine it recently. We have a small group that is within the poverty criteria of the Office of Economic Opportunity, a large group that is slightly above that criteria, and some middle class.

Senator **Mondale**. You would say it is predominantly a middle-class school?

Miss **Sussna**. I would say economically a majority of lower middle class, slightly above the poverty criteria. We examined this in connection with the receipt of day-care funds and we found that most of the families were just above that.

Senator **Mondale**. How many years have you been in operation?

Miss **Sussna**. We have been in full operation 1 year, under a Ford grant. We had been writing and speaking on the concepts of this program during the 4 years previous but without adequate funds to operate a full-scale model. One summer we took some black children in the neighborhood and gave them a black studies program, mainly with volunteer teachers.

Senator **Mondale**. This is your first full year?

Miss **Sussna**. Yes.

Senator **Mondale**. Have you done any testing?

Miss **Sussna**. Unfortunately we do not have funds for research in the sense of hard data; however, we have had informal evaluations throughout the year by people from the foundations which have supported us and from the colleges in the area. Five colleges in the area sent students to us for training.

Senator **Mondale**. You have not had any testing?

Miss **Sussna**. We test achievement of the individual children which has been very rapid. The children with English language handicaps seem to overcome them much more quickly than in other programs. The attitude and achievement of some of our entering children was tested a year ago but post tests have yet to be given.

However, observations of parents, teachers and outside observers are most positive. Even lay visitors have commented on the eagerness to improve knowledge and skills despite the fact that marks are not given to the children as punishment or reward.

Visitors who have taught English as a second language are particularly impressed at the English achievement of our children who speak another language at home. We attribute this achievement in large measure to the fact that we legitimize the home language to the children. A child who in the afternoon finds his superior knowledge of Spanish to be an academic advantage feels prepared and competent to really tackle that other language, English, in the morning.

Senator **Mondale**. What are the grades involved?

Miss **Sussna**. Nursery and elementary.

Senator **Mondale**. Kindergarten through——

Miss **Sussna**. Through fourth. We may have a child or two on the fifth grade level. It is a nongraded school.

Senator **Mondale**. Roughly that age category?

Miss **Sussna**. Yes. We are very anxious to introduce a junior high school program.

Senator **Mondale**. Your basic thrust is, as I understand it, recognizing the positive values and differences in each child.

Miss **Sussna**. Yes.

Senator **Mondale**. Your idea is that each child brings strength into the classroom and is to be honored for what he stands for—his color, his religion, his cultural system, his own interests?

Miss **Sussna**. Yes.

Senator **Mondale**. And that is the basic philosophy of the school?

Miss **Sussna**. Yes.

Senator **Mondale**. What kind of impact has this experiment had on the public school system in San Francisco? Have you found them moving rapidly in a similar direction?

Miss **Sussna**. No; we have not seen them moving rapidly. We had the debate. Is it more important to put the bodies together or more important to develop attitudes?

Senator **Mondale**. Your basic purpose is to try to cause the children to come to know each other?

Miss **Sussna**. Yes; each other and themselves.

Senator **Mondale**. And value each other?

Miss **Sussna**. Yes; each other and themselves.

Senator **Mondale**. And that is the basic thrust of your school: to teach each other?

Miss Sussna. Yes; that is precisely what they do. At the conclusion of each ethnic unit, they write a culmination to teach the others. For example, the black students spent several weeks on a unit on Martin Luther King. At the end of the unit, they put together a culminating program of poetry, song, and narration. It was one of the most beautiful things I had ever seen. The black children wrote it, and all of the other children were their guests.

The culmination ended characteristically with the playing of the record of Dr. King's, in which he said: "That day will come when all of God's children, Jew and gentile, Protestant and Catholic, will join hands together." And all the children and adults—all the Chinese, the Latin Americans, and so on—joined hands with the blacks and sang together. There was a very warm feeling of brotherhood.

We would like to be able to make films of such programs. I feel every child in the world would benefit from watching our black children putting on this kind of performance and also experiencing the spirit in which it concluded.

Senator Mondale. Do you have any black teachers?

Miss Sussna. All of our ethnic classes are taught only by the members of those groups. There is great value to the concept of talking among ourselves, about ourselves, and that is one of the reasons for separating into ethnic studies classes.

Senator Mondale. Pardon me for interrupting, but it is your experience and it is your testimony that integration cannot be just a mere mixing of bodies; it requires great sensitivity and must be designed to instill in each child a sense of his own worth; it must afford a real opportunity for children to come to know each other and value each other.

Miss Sussna. Precisely, and if you do that, true integration will come automatically.

Senator Mondale. It is interesting. I have never heard of any difficulty in integrating children in the elementary level of school who have had this kind of experience; they don't ever seem to have any trouble getting along but rather accept each other beautifully and quickly.

Miss Sussna. We see an effect on the parents, too. Some people say you have to wait for these children to grow up before an impact on the community is felt. I don't think that is true.

I see it very markedly with poor families, families that felt some shame about their identity.

Senator Mondale. Thank you very much.

Miss Sussna. I hope it would be possible for the committee to see the program.

Senator Mondale. Very exciting.

Senator Pell. Thank you very much. We are very grateful for your being here and for Senator Murphy who suggested that you come.

Thank you.

The meeting of the subcommittee is recessed for the day.

(Whereupon, at 12:05 p.m., the subcommittee recessed, to reconvene at the call of the Chair.)

EMERGENCY SCHOOL AID ACT OF 1970

FRIDAY, JULY 10, 1970

U.S. Senate,
Subcommittee on Education
of the Committee on Labor and Public Welfare,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 1114, New Senate Office Building, Senator Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senators Pell (presiding), Yarborough, Kennedy, and Mondale.

Also present: Senator Hughes.

Committee staff member present: Stephen J. Wexler, counsel; Richard D. Smith, associate counsel; and Roy H. Millenson, minority professional staff member.

Senator Pell. The subcommittee will come to order.

The first witness we have scheduled is Mrs. Reyes, but I believe Senator Kennedy wishes to be here when she testifies, so we will now hear from the panel of Mr. Cruz Reynoso, director of the California Rural Legal Assistance, San Francisco, Calif.; Hon. Manuel Ruiz, member of the U.S. Commission on Civil Rights, Los Angeles, Calif.; and Dr. Jose A. Cardenas, superintendent of the Edgewood Independent Schools, San Antonio, Tex. Will you gentlemen come forward, please.

You are all very kind to come such a long way. We will insert your statements in the record and ask each of you to make extemporaneous remarks. Is one of you acting as chairman of the panel, or shall we start from right to left. In any event would you identify yourselves.

Mr. Reynoso. Thank you very much. My name is Cruz Reynoso. I am director of the California Rural Legal Assistance, which is headquartered in San Francisco, Calif. If the chairman does not mind, I would like to elect Mr. Ruiz to act as our chairman if that is required later on in the discussion.

Mr. Ruiz. My name is Manuel Ruiz; I am a member of the Civil Rights Commission.

Mr. Cardenas. I am Jose A. Cardenas, superintendent of schools in the Edgewood School District, San Antonio, Tex.

STATEMENT OF CRUZ REYNOSO, DIRECTOR, CALIFORNIA RURAL LEGAL ASSISTANCE, SAN FRANCISCO, CALIF.

Mr. Reynoso. Mr. Chairman, I am delighted to be here before this committee. I am happy to be here testifying. I am particularly happy that S. 3883 has included the Spanish-surnamed and the Mexican-

American as part of those minority-group youngsters who need help pursuant to this bill.

Mr. Chairman, I must confess that that is about all I am happy about pertaining to this bill. If the committee wants to help the Mexican-American youngster in the Southwest and nationally, I believe that major changes must be made in the bill. The bill as it presently is written, I believe, is designed to see that little or no help comes to the Mexican-American youngsters.

Now in the United States we have perhaps about 10 million Spanish-surnamed Americans; perhaps, according to HEW, 2 million Spanish-surnamed youngsters in public schools; so we are talking about an awful lot of people, an awful lot of youngsters to be helped.

Senator **Pell**. How would they be divided—about half east of the Mississippi and half west?

Mr. **Reynoso**. I would estimate that it would be perhaps 65 percent west of the Mississippi; about 55 percent of those are Mexican-American or Mexican, 15 percent or so are Puerto Rican, then we have 5 or 6 percent Cuban, and so on. The greatest number are Mexican-American.

However, in Chicago, for example, we have about 120,000 Mexican-Americans, about 80,000 Puerto Ricans. So I would like to emphasize that we are not talking about a strictly regional problem. This is truly a national problem. There are, as the figures indicate, about half as many Mexican-Americans as there are blacks in this country.

Now, the problem is that we really have racial and ethnic isolation of the Spanish-surnamed. Sometimes we see it by school district, and Dr. Cardenas will speak of that; I have seen this phenomenon particularly in Texas; it is found also in California, where a school district will be 95 percent Mexican-American, and it is tough to talk about integration in that school district as it is tough to talk about integration in Washington, D.C., with the vast number of black students.

In California I have seen, for example, in the city of Calexico; in Texas, in San Antonio, in south Texas, where 80 to 90 percent of the people are Mexican-Americans. Sometimes we have segregation by schools within that district. In California, the figures indicate that about 39 percent of all of the Spanish-surnamed youngsters attend segregated or racially isolated schools. In Texas, the figure is even higher. It is about 65 percent.

So, no matter how we look at it, we have racial and ethnic isolation.

But then—and this is very important for the Mexican-American youngster—we have segregation and isolation within a school itself. Thus, for example, in the tracking system—as a youngster I grew up in segregated schools—we find that if you have an ABC system, invariably 90 percent of the youngsters in "C," or dumbbell track, are Mexican-Americans. This is a terrible trauma for those youngsters. It is simply an incident of segregation within that school, either by classrooms or sometimes even within the classroom.

I was visiting south Texas. In one school, they had one section laid aside for the migrant youngsters, who happened to be a hundred percent Mexican-Americans—again, segregation within the school.

In California, the California Rural Legal Assistance brought an action attacking the education in mentally retarded classes in California, where we find a disproportionate number of Mexican-American youngsters.

So we have this right down the line. The results are not surprising. In Texas, in 1970, the Mexican-American had reached a level of the 6th grade in education compared to the 11th grade for the Anglo or the non-Mexican-American or nonblack. In California that year, it was eighth grade for Mexican-American and 12th grade for Anglo. The dropout rates in California are higher than any other racial or ethnic group, including the black. In Texas, I understand the figures are even worse.

With all that as background, where do we stand now in terms of what the law says? This committee, I am sure, is aware of the increasing activity on this kind of segregation in the courts. We in California Rural Legal Assistance, the Mexican-American Legal Defense Fund, and other groups have begun to attack these problems in the courts.

Fortunately, I think, the courts are reacting favorably. Recently we filed a successful desegregation lawsuit in Stockton, Calif. The Mexican-American Legal Defense Fund has been active in the now famous *Corpus Christi* case and the *Sonora* case. Perhaps the most important case for us is the *Corpus Christi* case, where the judge simply said Mexican-American youngsters are entitled to the protection of the 14th amendment, they are entitled to the protection of Brown versus Board of Education, they are entitled to the things that HEW has been saying they are entitled to, that integration can't be merely among Mexican-American and black youngsters.

Again referring to my hometown of El Centro, for example, there is one school, a grammar school, in a town that is about 99-percent black and Mexican-American. The rest of the schools are relatively well integrated. The court has said this is not enough; to mix two minorities is not really meeting with *Brown* v. *Board of Education*. You have to have an integration of all those groups.

So the courts have said, and this bill seems to say by including the Spanish-speaking and, by definition, minority youngsters, that the Mexican-American and other minorities are to be helped by this bill.

So we come to what bothers me about the bill. As I see it, if the bill is not changed, the Mexican-American youngster will get practically no benefit from this bill. We start out with the philosophy of the bill which, in effect, double-counts those youngsters that are under Federal court order or HEW orders. This means that by double-counting, you give benefit to those school districts where the Federal Government has chosen to be most active. Regrettably, the Federal Government has chosen not to be active with respect to those school districts that have the high concentrations of segregation of Mexican-American youngsters.

Thus, because of the inactivity of the Federal Government on the one hand, this bill chooses further inactivity in terms of helping those youngsters. I think that is a sad commentary on this bill.

Secondly, I think we have to be realistic that practically everything that this bill says ought to be done can presently be done by title I programs. So, unless we are careful, we are going to have a gigantic $1.5 billion title-I-type boondoggle. We have seen in California that unless you are very specific on what you want done, those things don't get done.

I would suggest that this committee not take for granted that HEW will do its job; not take for granted that the school districts will do their job, and so on, that this committee be very specific in terms of what it wants done.

Unless it is done, gentlemen, I can assure you it will not be done. A client of mine used to say anything that can be misunderstood will be misunderstood. In this case HEW and the school districts will do anything they can get away with.

The philosophy, very often—and this is an earnest philosophy of the school board members—is that it is unfair to all youngsters, particularly Anglo youngsters, to take Federal funds and then give it from their point of view to special groups. The tendency is to take Federal funds and spread it across. That simply, as I see it, is not what this bill is intending to do.

So the thrust, as I see it, unless this committee is very careful, will be a frosting on the cake to those districts that are being forced to desegregate in the South.

I understand that the Attorney General is going to be filing statewide suits in the South and only in the South, so that quickly we will have all of these schools subject to double-counting and again rewarding those schools where Justice and HEW have chosen to be active and not those schools necessarily that need the help, because regrettably those two agencies react, as we know, to the political pressures of the time.

Senator Mondale. Would you yield there?

Another undesirable aspect of that double-counting proposal in the legislation is that it would reward those school districts which have been most reluctant to comply with the constitutional mandate rather than those school districts which have voluntarily gone ahead and complied with the constitutional objectives laid down over 16 years ago. We are rewarding recalcitrants.

Mr. Reynoso. It not only rewards recalcitrant school districts: it rewards recalcitrant States.

I mentioned the *Stockton* case we filed. Our attorneys did a lot of research on that, and they decided the law was a lot stronger under the State laws and the State guidelines and we had a better chance of winning in the State court instead of the Federal court. So we went into the State court, and we won.

Now, we went into the State court because California has been more enlightened than, say, Mississippi, though sometimes not much more.

This bill would tend to reward those unenlightened States. So, you know, it is a terrible sort of thing when you are rewarding the wrongdoers and not helping those who are really trying to do something about it.

Senator Mondale. For example, in the Los Angeles case——

Mr. Reynoso. That is a State case.

Senator Mondale (continuing). They would not be eligible for the double-count.

Mr. Reynoso. That is correct.

Senator Mondale. Because it is a State court. It is in East Los Angeles, where there is a tremendous population of Mexican-Americans who desperately need the protection of the Constitution.

Now, in the $150 million emergency measure, on the Senate side, we were able to tack on an amendment which would make it nationwide in scope. It overcomes the Federal-State jurisdictional distinction. At the very least, districts complying with State orders deserve the same treatment as these in Federal court.

Mr. Reynoso. It seems to me some mechanism needs to be found whereby HEW is mandated to pass upon whether or not a State court decision or a voluntary decision meets the guidelines of title VI or *Brown* v. *Board of Education*. Some mechanism has to be found there to reward those school districts that are willing to move on their own and not to have the terrible thing we have seen, I think, in the last year or two of those school districts, for example, in the South, that have proceeded in good faith, now appearing impolitic, let us say, before their peers, because if they had been more recalcitrant, maybe the Wallace philosophy would have helped and maybe they would have been able to get away with it. The constituency sometimes is saying: Now, you board members, you weren't very smart; you should have fought the Federal Government longer. *Brown* v. *Board* still should not be implemented, even though it has been a decade and a half.

So our experience has been, in California, that if you give the Secretary of HEW discretion—and he has practically absolute discretion here; I know, for example, that even under the voluntary plans, it has to be a voluntary plan that has been approved by HEW—apparently nothing can be done without the approval of HEW under this bill. When you do that, I can assure you gentlemen that nothing or next to nothing will be done for the Mexican-Americans.

So I say again: Unless it is changed, it won't be done.

Now, our experience with title I, which I think is important here, has been that unless you have a lot of community involvement, unless you have sort of an ombudsman to look after those funds, terrible things happen. In Fresno, for example, where we have some clients and we are investigating title I expenditures, we have found nearly a million dollar expenditure on television programing for the entire school from title I money that was supposed to help those culturally deprived youngsters. We have seen, in California, money that is supposed to go to migrant youngsters taken and applied to the general funds. We see this over and over again.

So, unless we have community involvement—and I mean decision-making, and I think it has to be built into this statute—we are going to have, I think, another $1.5 billion expenditure of funds allegedly to help minority youngsters and, in fact, not helping them.

Let me summarize what to do. As I said, take nothing for granted. Be specific on what you want done here. Two, you have to call upon, it seems to me, the expert Mexican-American, Puerto Rican, Oriental, and other educators to help this committee and to help the House, and I am concerned about this committee right now, to help you draft into the bill those types of controls that you want. Because if you want them, you have to have them there.

Now, I would suggest several such details right now: One, any plan that HEW approves—and I think HEW must be placed in a position where it must act upon plans—must indicate what that school district is going to do about the Mexican-American, other Spanish speaking and other minorities. When, for example, a given school in that district has more than, say, 5 percent of that given minority, you have to build that in.

Perhaps you might consider saying that a certain percentage—10, 20, 30 percent—of all of these sources must be spent to integrate the Spanish speaking. I know that is difficult, but again I say unless you do it, it just won't be done.

Maybe you can look at your figures and figure out how many minority youngsters there actually are in a district. There ought to be no double counting, as included in the bill right now.

Then the community must be involved. Citizens' groups must be notified. I think there ought to be a requirement in the bill that when a school board applies for moneys, copies of that application go to any community group that is interested. When the Government acts on that application, copies of that action should go to each of those community groups.

I know that this can be built into a statute. For example, in California, there was a study committee set up and the statute said in order that we be sure that we hear from those who are interested, advise the following organizations of the study committee and request their testimony. We learned about this in California Rural Legal Assistance when we got notice from the committee saying, "Pursuant to bill such and such, we are notifying you that the study committee will request your testimony." So it can be built into the bill and it must be.

Now, I do not know how you make sure of this community involvement. Maybe once you have the mechanism, you have the mutual veto power between the community group and the school administration. For example, in the little town of Livingston, Calif., we were called because there were some student and community problems in the school. We went in there, and the school official said: "We have no problems." Later we found out there were something like $120,000 title I grants to help with the problems defined by the school as racial tensions.

So we need monitoring. I think legal services programs, I think certain community groups like the Mexican-American Educators Association in California and others can be monitors.

Over and above that, we need enforcement. I suggest to you that the 1 percent mentioned in the bill, if I remember correctly, is very low. I would rather have 5 or 10 percent and make sure that the 90 or 95 percent is well spent than have 1 percent—and it is not even called monitoring or something of that sort—than have 1 percent and misspend 99 percent.

Let me end where I began. If this committee really wants to do something about it, it has to do it in the bill; it must assume that if it does not do it, it won't be done. Thank you very much.

(The prepared statement of Cruz Reynoso follows:)

PREPARED STATEMENT OF CRUZ REYNOSO, DIRECTOR, CALIFORNIA RURAL LEGAL ASSISTANCE, INC., SAN FRANCISCO, CALIF.

I. INTRODUCTION

Senate Bill 3883, cited as the "Emergency School Aid Act of 1970," expressly includes in the definition "minority group children" all Spanish-surnamed Americans. The term "Spanish-Surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry. To have excluded the Spanish-speaking American from the definition would have shown the gravest lack of concern for the status of our second largest minority. In fact, Congress has recently created a "Cabinet Committee on Opportunities For the Spanish-Speaking" and appropriated funds for its operation.[1] Its purpose is to assure that

---

[1] Public Law 91–181, 91st Congress, S740, December 30, 1969.

federal programs reach all Mexican Americans and other Spanish-speaking peoples. This report will speak largely in terms of the Mexican-American, which is the largest segment of those of Spanish Surname,[2] while remaining cognizant of the other Spanish Surname groups.

II. CONSTITUTION PROHIBITS DISCRIMINATION AGAINST MEXICAN AMERICANS

The courts of this nation have taken judicial notice of the fact that Mexican Americans are an identifiable ethnic minority in the United States, and especially in the Southwest. This is not surprising; one can notice and identify the physical characteristics of the Mexican Americans, their language, their predominant religion, their distinct culture, and their Spanish surnames. In *Hernandez* v. *State of Texas*[3] the United States Supreme Court reversed a murder conviction after rejecting the contention of the State of Texas that there are only two classes, Anglo and Black, within the contemplation of the equal protection clause of the Fourteenth Amendment. The Court stated that the Constitution guarantee of equal protection of the laws was not directed solely against discrimination between Anglos and Blacks, but was also applicable as between Anglos and Mexican Americans. The Court defined a class entitled to such protection in the following manner:

> When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination between "white" and Negro.[4]

A. Segregation in public schools prohibited by Constitution

A federal circuit court of appeals found as early as 1947 that Mexican Americans were a group entitled to the protection of the Fourteenth Amendment because of discriminatory practices which segregated them from Anglo children in the public school system.[5]

In Texas the federal courts have held on several occasions that Mexican American children separated from Anglo children in the public schools are entitled to the protection of the Fourteenth Amendment.[6] The United States District Court for the District of Colorado at Denver likewise held in a school segregation case that "Hispano Americans" are an identifiable ethnic minority.[7] Even more recently the District Court for the Southern District of Texas held in *Cisneros* v. *The Corpus Christi Independent School Board*[8] that the placement of Blacks and Mexican Americans in the same school does not achieve a unitary system of substantial integration. The Court held that Mexican Americans are indeed an identifiable ethnic minority in the United States, and that placement of Mexican American and Black students in the same school did not satisfy Constitutional requirements set out in *Brown* v. *Board of Education*.[9] The Court read *Brown* to mean that when a state undertakes to provide public school education, this education must be made available to all students on equal terms. Segregation of any group of children in such public schools on the basis of race, national origin or ethnicity deprives these children of the guarantees of the Fourteenth Amendment.

In line with these cases, the United States Department of Justice has recently filed its first complaint based on segregation of Mexican American school children.[10] The Department of Justice intervention action followed a recent policy statement by the Department of Health, Education and Welfare stressing that public school districts must take affirmative action to rectify a language deficiency where the inability to speak and understand English excludes these children from effective and meaningful participation in the educational program.

---

[2] Preliminary data from the November, 1969 Bureau of Census sample survey lists 9,230,000 residents of "Spanish descent" living in the 50 states and the District of Columbia. Puerto Rico is excluded. The term "Spanish descent" includes all Americans who identify themselves as being of the following origin or descent: Mexican, Puerto Rican, Cuban, Central or South American, other Spanish. The percentage of each ethnic group among those of a "Spanish descent" is as the following: Mexican, 55 percent; Puerto Rican, 15.8 percent; Cuban, 6.1 percent; Central or South American, 6 percent; Other Spanish American, 17.1 percent. See U.S. Department of Commerce, Bureau of the Census, *Current Population Reports, Population Characteristics*, Series P–20, No. 195, February 20, 1970.

[3] 347 U.S. 475, 74 S. Ct. 667 (1954).

[4] Ibid., p. 478.

[5] *Westminster School District of Orange County* v. *Mendez*, 161 F. 2d 774 (C.A. 9, 1947).

[6] *Herminia Hernandez* v. *Driscoll Consolidated Independent School District*, (S.D. Tex., Corpus Christi Div., C.A. No. 1384); *Diago Chapa* v. *Odom Independent School District* (S.D. Tex., Corpus Christi Div., C.A. No. 66–C–92); *Minerve Delgado* v. *Bastrop Independent School District of Bastrop, Texas* (W.D. Tex.).

[7] *Keys* v. *School District No. 1*, Denver, Colorado. (D.C. Colo., C.A. No. 1499).

[8] (S.D. Tex. Corpus Christi Div, C.A. No. 68–C–95).

[9] 346 U.S. 483 (1954).

B. Racial isolation of Mexican Americans in public schools

Senate Bill 3883 seeks to aid school districts to meet not only the special needs incident to the elimination of racial segregation, but also to encourage the voluntary elimination and reduction of "racial isolation" in schools which have substantial numbers of minority group students. Section 9(g) of Senate Bill 3883 defines "racially isolated school" and "racial isolation" to mean a school and condition in which minority group children constitute more than 50% of the average daily attendance of the school.

There can be no denial of the fact that many Mexican American children are enrolled in "racially isolated schools." For example, in California approximately 13.7% of the total number of pupils in the public schools are Mexican American. In a 1967–68 survey, 215 California school districts each reported at least one school with 50% or more minority enrollment. There were a total of 987 such schools. Approximately 39% of all Mexican American students attend such "racially isolated schools." [11] California has an integration scale which has been applied to every elementary and secondary school in the state, comparing its racial and ethnic composition with that of the district in which it is situated. This scale defines a school as "imbalanced" if there is a deviaton of more than 15 percentage points above or below the district mean for each racial or ethnic group.[12] In the 1967–68 survey, 212 school districts each reported at least one imbalanced school, and there were 1,837 such schools out of more than 6,600 in the state. Approximately 46% of the total Spanish-surname pupils in California attended such "imbalanced" schools.[13]

Also, in Texas, 291,388 Mexican American pupils, or 57.7% of the total number of Mexican pupils in the state, attended predominantly Mexican American school districts. An incredible 65% of the total number of Mexican American students attended predominantly "minority" school districts.[14]

---

[10] See Exhibit A. (Exhibits may be found in the files of the subcommittee).

[11] "Distribution of Racial and Ethnic Groups in California Public Schools—A Report to the State Board of Education." November, 1968, p. 3, 4. Also, See Exhibits B, C, D. (Exhibits may be found in the files of the subcommittee.)

[12] In February, 1969, the California State Board of Education adopted amendments to Sections 2010 and 2011, California Administrative Code, Title 5.

Section 2010 restates and strengthens the declared policy of the State Board of Education that local governing boards shall exert all effort to prevent and eliminate the racial and ethnic separation of pupils in the public schools.

Section 2011 is concerned with the means by which that policy is to be carried out. Its main provisions are:

(*a*) a list of some of the factors to be considered in establishing school sites, attendance areas and attendance practices;

(*b*) the requirement of periodical racial and ethnic surveys and the submission of data to the State Department of Education;

(*c*) a definition of imbalance, the requirement that districts having imbalanced schools study and consider corrective plans, and a list of some of the factors to be considered in determining the feasibility of such plans.

Imbalance is indicated in a school if the percentage of pupils of one or more racial or ethnic groups differs by more than 15 percentage points from that in all the schools of the district. "Racial and Ethnic Issues in the Public Schools—An Advisory Report to the Board of Education of Madera County" by the California State Department of Education, September, 1969, p. 52.

[13] See Note 11; p. 4. See also Exhibits E, F, G. (Exhibits may be found in the files of the subcommittee.)

[14] See table below:

NUMBER OF MEXICAN AMERICAN PUPILS IN PREDOMINANTLY MEXICAN AMERICAN PUBLIC SCHOOL DISTRICTS [a]

	Arizona	Texas	California	New Mexico	Colorado	Total
Number	12,125	291,388	54,741	38,891	6,568	403,711
Percent	16.9	57.7	8.5	37.8	9.2	28.9

NUMBER OF MEXICAN AMERICAN PUPILS IN PREDOMINANTLY "MINORITY" SCHOOL DISTRICTS [a]

Number	22,260	328,377	108,537	49,479	6,568	515,221
Percent	31	65	16.8	48	9.2	36.9

[a] Fall 1968, HEW title VI survey.

C. Low educational achievement of Spanish surname child

Not surprisingly, the educational attainment of Spanish-surname Americans is not very high. The general education achievement level of Spanish surname males in the Southwest is approximately the eighth grade.[15] In Texas the average achievement level is only the fourth grade, as compared with the average attainment of eleventh grade for the Anglos. The Spanish-surname average is not only lower than the average grade completed by the Anglos, but is lower than the average grade completed by the Blacks.[16] An obvious functional cause of the low educational achievement of Spanish-surname Americans is an exceedingly high drop-out rate.[17]

III. THE PROBLEMS OF SPANISH SPEAKING SCHOOL CHILDREN

However, the statistics only reflect symptoms, not the malady. The Spanish-speaking American, and more particularly, the Mexican American, possesses distinct cultural and linguistic characteristics which have resulted in unique educational difficulties. For example, counselling and guidance services are often related to the lower level of education received by Mexican American children. The California State Department of Education's 1968 survey on the distribution of racial and ethnic groups in public schools showed that Mexican American students were heavily represented in special education classes, including classes for the mentally retarded and the emotionally disturbed.[18] It seems clear that the Mexican American child who cannot communicate in English is at a severe disadvantage when taking an intelligence test exclusively in the English language. A low score on such an exam may result in the assignment of such a child in classes for the educable mentally retarded (EMR). The California Rural Legal Assistance (CRLA) brought a suit challenging the assignment of Mexican American pupils to EMR classes solely upon the basis of scores received on cul-

---

[15] Educational Attainment of Spanish Surname Males [a] in the Southwest, by Place of Residence, 1960:

Residence:	*Median schooling (years)*
All	8.1
Urban	8.4
Rural nonfarm	6.9
Rural farm	4.6

[a] Age 14 and over.

Source: Data used to obtain this and all other tables in this report are from *U.S. Census of Population, 1960:* primarily from Volume I, *Detailed Characteristics*, and Volume IV. *Subject Reports, Persons of Spanish Surname*. All income data refer to 1959. *Mexican American Studies Project, Advance Report,* U.C.L.A., 1966, p. 4.

[16] Median educational attainment of ethnic group and Anglo males,[a] by State, 1960:

[In years]

Ethnic group	Arizona	California	Colorado	New Mexico	Texas
Spanish surname	6.7	8.5	8.1	7.7	4.8
Nonwhite	7.8	10.2	11.1	7.0	7.5
Indian	5.0	9.2		5.3	
Negro		9.8			
Chinese		10.1			
Filipino		8.2			
Japanese		12.4			
Anglo	12.1	12.1	12.1	11.4	10.3

[a] Age 25 and over.

Source: Data used to obtain this and all other tables in this report are from *U.S. Census of Population, 1960:* primarily from vol. I, *Detailed Characteristics*, and vol. IV, *Subject Reports, Persons of Spanish Surname*. All income data refer to 1959.
Mexican American Studies Project, Advance Report, U.C.L.A., 1966, p. 14.

[17] "In 1960, 22.9 percent of the Mexican Americans in the State over age 25 and 5.4 percent of the Blacks had not attended school at all. That compares to 1.1 percent of the Anglos. The absolute numbers are 128,679 Mexican Americans, 31,710 Blacks, and 43,660 Anglos."

"An astounding 78.9 percent of the Mexican American children drop out of classes before high school, and 60.1 percent of the Black children do. This compares to 33.1 percent of the white Anglo population which gives that segment of the population quite an advantage." *Civil Rights in Texas: A Report of the Texas Advisory Committee to the U.S. Commission on Civil Rights,* February 1970, p. 4.

[18] See Note 11; p. 6.

turally discriminatory tests given exclusively in the English language.[19] As the Director of CRLA, I was naturally quite pleased that we won a stipulated judgment and order which called for state psychologists to develop a new or revised IQ test to reflect Mexican American culture. The test is to be normed by giving it only to Mexican American children. All children whose primary home language is other than English must from now on be tested in both their primary language and in English. Also, they may be tested only with tests or portions of tests that do not rely on such things as vocabulary, general information, and other similar unfair verbal questions.

The educational problems of the bilingual and bicultural child can only be solved with the assistance and aid of bilingual teachers, administrators. and bilingual counselling and guidance programs. Improper placement in EMR classes is only one reason why more stress should be placed on bilingual educational programs. Counselors are often untrained in the area of Mexican American culture. The schools on the whole are not employing minority educators, nor are they found in positions of administration or of policy-making. The failure of many Mexican American children and adolescents to relate positively to many of their Anglo teachers and administrators is due in large measure to insufficient understanding of differences in psychological conditioning and cultural attitudes. An awareness of these differences is of central importance in developing a high quality integrated educational program. The California State Department of Education in an advisory report to the Board of Education of Madera County in 1969 recommend the following:

> Schools therefore must take "Mexican" cultural traits and values into account when planning educational programs, and must refrain from attempting to force Mexican American youth into a homogeneous cultural mold that often is not appropriate to their life style or way of thinking and feeling.[20]

Effective guidance of Mexican American students is a particular lack. Changes in curriculum, structural methods, pupil personnel practices, teacher preparation and community relations programs are necessary to meet the needs of this group, and to broaden the perspective of every student on the role and contributions of the peoples of the Western Hemisphere. Pride in the Mexican American heritage has a potential for a positive motivation toward scholastic achievement. It can be used to create a richer society. Community resources such as traditional observances, folk art and folk lore, the history of Mexico, and study of Mexican contributions to American society may be of great value to the schools.

IV. THE NEED FOR INTEGRATION

The fact that there are so many Mexican American children in segregated or "imbalanced" schools is the result of both *de facto* and *de jure* segregation in public schools. However, the problem of racial imbalance should not be obscured by such terms as "de facto" or "de jure" segregation or by "state action."

These terms only obscure the issue of governmental responsibility. An essential, and traditional function of local government is the maintenance and operation of a public school system. The government finances this system with public monies, decides questions of educational policy, and it alone has the authority to assign pupils to different schools within the system. The U.S. Supreme Court requires school authorities to take affirmative action that will tend to eliminate all vestiges of the dual educational system. To mix Black students with Brown students and deprive both groups of interaction and intermixture with Anglo students is not compliance with the Constitutional command nor the mandate of the Supreme Court. Therefore, a school system cannot be converted into a unitary system unless all three ethnic groups are integrated.[21] Anything less will only continue to maintain a dual system of education. The judge noted in the ruling of the court in the *Corpus Christi* case that administrative decisions by the school board in drawing boundaries, locating new schools, building new schools and renovating old schools in the predominantly Black and Mexican American sections of town, and in providing a flexible ad subjective transfer system that resulted in some Anglo children being allowed to transfer out of the minority schools resulted, as a matter of fact and law, in a *de jure* segregated school sytsem.[22]

---

[19] *Diana* v. *California State Board of Education*, C70–37, U.S. District Court for the Northern District of California, 1969.

[20] See Note 11; p. 10.

[21] See Note 8.

The Mexican American Legal Defense and Educational Fund (MALDEF) has recently filed in Texas a law suit alleging that Mexican American school children are racially and ethnically segregated on a *de jure* basis.[23] The school district involved has a total enrollment of approximately 2400 children of which 2% are Black, 1% Anglo, and 97% Mexican American. One school within that district has 97% Anglos and only 2% Mexican American students. It is alleged that Mexican Americans are not allowed to transfer out of their geographical area, and tight ability grouping is used to keep Mexican American children separated from the Anglo children. It is alleged that this kind of educational system violates the equal protection clause of the U.S. Constitution as well as the Civil Rights Act of 1964.

The divisions and problems within our educational system as they relate to Mexican Americans has already been the cause of major disruptions in several schools and communities throughout the Southwest. The most prominant demonstrations occurred in early March, 1968, in Los Angeles where thousands of students staged walkouts in five predominantly Mexican American schools in the East Los Angeles barrios. Student-police clashes, mass demonstrations, sit-ins, and arrests followed these walkouts.[24] It is interesting to note that the major cause of these walkouts was the lack of bilingual teachers and guidance counselling in the predominantly Mexican American schools.

V. SENATE BILL 3883 IS UNRESPONSIVE TO NEEDS OF SPANISH SURNAMED

Although the Spanish-surnamed American is included in the definition of "minority group children" provided by Section 9(d) 1, the question still remains as to what benefits these children will receive by the enactment of the "Emergency School Aid Act of 1970." There are several indications that the provisions of Bill 3883 will again shortchange Mexican American pupils in public schools. First of all, monies are allocated among the states by a rather unusual accounting method. The Secretary allots an amount equal to two-thirds of the sums appropriated by alloting each state $100,000, *plus* an amount which is equal to a state's proportionate share of the total number of "adjusted number of minority group children" in all of the states. Section 4(c) defines the term "adjusted number of minority group children" for any state as the number of minority group children enrolled in its public schools, *and* (1) the number of minority group children enrolled in public schools in such state which is carrying out a plan of desegregation pursuant to the final order of a U.S. Federal Court, issued within two preceding fiscal years *or* (2) pursuant to a determination by the Secretary of HEW made within this two-year period that such a plan of desegregation is adequate to meet the requirements of Title VI of the Civil Rights Act. This method of determining the "adjusted number of minority group children" clearly favors Southern school districts—those most reticent to integrate their educational programs.

This counting procedure rewards those states whose school districts are under federal court or HEW order to desegregate, and it is not a coincidence that these states are all in the South. This provision penalizes those states that voluntarily attempt to inegrate their schools. It also penalizes school districts such as are in Los Angeles which are under a state court order to integrate.[25] Also, there are no provisions in Bill 3883 that indicate that integration must also take place in the classes and in other school activities and not just at the school level. The purpose of Senate Bill 3883 is apparently to eliminate *de jure* segregation. But the net effect is that it ignores the needs and wants of Mexican American school children. The courts of this nation have taken judicial notice of the fact that Mexican Americans are an identifiable ethnic minority in the United States, and that to mix Black students with Brown students and thus deprive both groups of interaction with the Anglo students is not compliance with the Constitutional requirements set forth in *Brown*. A school system cannot be converted to a unitary system unless all three ethnic groups are integrated. The district court opinion in the

---

[22] C.A. No. 68–C–95, June 4, 1970. Ruling of the Court, p. 7.

[23] *Zamora* v. *Braunfeldt Independent School District*, No. 68–205–5A, U.S. District Court, Western District of Texas.

[24] See Exhibit J. (Exhibits may be found in the files of the subcommittee.)

[25] L.A. Court Order.

Corpus Christi case indicates the extent to which federal courts have accepted the Mexican American as a distinct identifiable ethnic group who come within the scope of the equal protection clause of the Fourteenth Amendment. Section 4(c) of Senate Bill 3883 clearly discriminates against Mexican American school children because few such pupils are presently under a federal court order or a HEW desegration plan order and are thus not counted under the terms of Section 4(c), 1(A) and (B). Thus a Mexican American child attending a "racially isolated" school in the Southwest is almost certain to be counted only once, while a Black child in Mississippi or Alabama will more than likely be counted twice for purposes of determining eligibility for financial assistance to the local educational agency.

This method of allocating funds raises severe Constitutional questions of denial of equal protection of the laws. Whether or not a "minority group child" is enrolled in a school which is carrying out a plan of desegregation pursuant to a final order of a federal court or pursuant to a determination of the Secretary of HEW that a desegregation plan is adequate to meet the requirements of Title VI of the Civil Rights Act rests totally with the initiative of two branches of the federal government. These two branches have until recently been concerned largely and almost exclusively with the plight of black school children. Does Congress now intend to penalize Mexican American school children who attend equally "racially isolated" schools as do Black Children, merely because the executive and judicial branches of our government have shown little concern for the educational problems of the Spanish Surnamed Child?

VI. PAST FEDERAL INACTION REGARDING SPANISH SURNAMED CHILDREN REPEATED IN BILL

The fact that Mexican American school children and those of other Spanish-speaking groups have been the subject of "benign neglect" in the past now means that they are to be penalized as the result of such government inaction. Even such recent landmark decisions as the *Corpus Christi* case have been the product not of an HEW desegregation order or of the initiative of the Justice Department, but have instead been the result of civil suits brought by private parties. The *Corpus Christi* case was brought by the Mexican American Legal Defense Fund.

It is also important to note that the U.S. Department of Justice intervention action, which is, I repeat, the first filed by the government based on segregation of Mexican American school children, initially was a private suit brought again by MALDEF to desegregate the Sonora Independent School District in Southwest Texas. It thus seems fair to state that the Mexican American school child has been the subject of almost total government inaction in the area of school desegregation. It seems to be ludicrous, to me to now penalize all Spanish-surname Americans and to deprive them of the full benefits provided by the Senate Bill 3883 on the ground that the government has not acted in the past.

Not only are Mexican American children unfairly denied the full benefits of Senate Bill 3883, but formal standards and guidelines are lacking for determing how, where, or for what purposes funds are to be spent. The school districts implementing federal court or HEW approved desegregation plans, or which have completed implementation of such plans within the two years prior to application may receive the costs of implementing such a plan and the costs of special projects. But beyond provisions for teacher sensitivity training, and for the mobilization of community groups, Senate Bill 3383 does not indicate what a "special project" might be. Without proper guidelines there can be no assurances that aid will not be given to school districts which are not truly attempting to desegrate.

School districts with one or more schools having enrollment of 50% or more minority or having one or more schools in danger of becoming racially isolated may also receive funds. However, the language of the bill would indicate that school districts would receive funds only for transferring students, and not for "special projects" which would make integration successful. Moreover, Section 6(g) states that nothing in this Bill shall be construed to require the transportation of students to overcome racial imbalance in the schools. It thus appears that funds may not be allocated for *voluntary* busing or other integration programs which involve busing. If this assumption is true, the usefulness of this provision is certainly minimal and even meaningless. An illustration of the need for busing may be found in the recent California State Court decision requiring busing of students in Los Angeles County.[26] The court was cognizant of the fact that busing may often be the only means of eliminating "racial isolation" in cities like Los Angeles and in other northern cities.

---

[26] Ibid.

The Secretary of HEW allocates two-thirds of the alloted funds in the manner previously described, but retains sole discretion to expend the remaining one-third. Such discretion vested in the Secretary seems to leave the door wide open for political and regional pressures to be exerted in the allocation of such funds.

It is quite significant that Senate Bill 3883 makes no specific reference to the needs of language minorities, beyond including them in the definition of "minority group child." It is clear that the most fundamental need of the Mexican American and other Spanish-speaking school children is language instruction in the early elementary grades, or even in preschool activities. There is a dire need for specially trained teachers and guidance and counselling services. The enactment of the Bilingual Education Act of 1968—Title VII, Elementary and Secondary Education Act—thrust a national legal and moral commitment for bilingualism into the hands of the educators of our country.

Bilingualism must not be confused with the teaching of a second language as such. Bilingual teaching means concurrent use of two languages as a medium of instruction in all parts of the school curriculum, except for the actual study of the languages themselves. In a classroom situation, for example, equal time might be devoted to instruction in all subject areas in both English and Spanish. Thus, bilingualism is not merely foreign language teaching. This type of bilingual teaching is especially important with regard to Section 5(a)3, which provides for assistance to school districts or other institutions and organizations to carry out educational programs or projects involving the joint participation of minority group and non-minority group children who attend racially isolated schools. This section further provides that in the case where such programs cannot practicably be made, then such school district may carry out unusually promising pilot or demonstration programs or projects to overcome the handicap of racial isolation upon such children. Bilingual education offers an opportunity to carry out many promising pilot or demonstration programs. Obviously, one of the key ingredients in bilingual education is the teacher who can teach subject matter in another language besides English.

Training or obtaining these teachers will not be easy, but such teachers do exist right now. Section 6 includes several programs or projects which are eligible for assistance. There are provisions of Section 6(a)-(e) all of which are sources for the advancement of bilingual education in the schools. Comprehensive guidance and counselling for Mexican American students must be made available, and remedial and other services to meet special needs of such children can be prepared in a bilingual context. Bilingual education is really bilingual-bicultural education. Language is not just an instrument for communication and learning; it is a total way of thinking, feeling, and acting. It is a set of personal values. It is a key that may open up two cultures which a youngster cannot only see but also live in.

Along with a bilingual teacher in the classroom there should also be a bilingual aide from the community. The use of such an aide should be only part of a plan to develop more cultural consideration on the part of the school. The use of language is important, but recognition of cultural values and customs is even more important.

One observation should be made, and that is that the family should participate in the child's schooling. The Anglo and the black regard this participation as a natural aspect of the raising of children. The Mexican American often does not. The educational programs for the bilingual-bicultural child must have an integral part which provides for home-school relations. One method of maximizing the efficiency of such parent participation seems to be provided for by Section 5(b), which allows grants to be made to any public or non-profit agency, institution, or organization to carry out programs or projects designed to support the development or implementation of a program or plan of desegregation.

This provision is not very explicit as to the type of organization or non-profit private agency which may receive such grants, but it is certainly realistic and practical to permit legal services agencies and organizations such as California Rural Legal Assistance to monitor and oversee such projects. Not only do these legal service agencies have the legal expertise to serve such a role, but they also have close contact with those communities which are more likely to have children in racially segregated or racially isolated schools. California Rural Legal Assistance and the Mexican American Legal Defense Fund have already developed some expertise on school desegregation plans through their efforts in bringing several suits on behalf of Mexican American school children in school desegregation cases. Also, these legal organizations have advisory committees which are composed to a large degree of members of the communities they serve. This close and intimate relationship, coupled with the legal and educational expertise, indicate that such legal organizations should be placed in the role of ombudsmen for the development or implementation of desegregation plans. These organizations seem the most likely sources of providing the needed community input into the preparation of bilingual education in the schools, and would also be a principle source of informing and involving the community in the ways and manners in which funds are to be allocated and spent under Senate Bill 3883. Although the concept of having organizations CRLA and MALDEF serve as ombudsmen in the area of school integration may seem quite novel, it must be considered in the context of the quite novel concept of bilingual education in the schools. Organizations as CRLA and MALDEF clearly fit the definition of Section 5(3)(b), and a provision should be added to state quite clearly that these organizations may not only serve to implement the provisions of this act but should also be encouraged to assume such roles.

VII. NATIONAL ADVISORY COUNCIL

Section 12 of Senate Bill 3883 provides that the president shall appoint a National Advisory Council on the Education of Racially Isolated Children, consisting of twelve members, for the purpose of review and administration and operation of this act. The section does not provide for guidelines on the composition of this council. It appears necessary that several members of the National Advisory Council be of Spanish Surnamed inasmuch as the Spanish speaking are explicitly included with definition of "minority group children."

There must also be sufficient numbers of Mexican Americans involved in the job of administering this program, and this number should reflect the fact that Spanish Surnamed Americans constitute our second largest minority.

VIII. BILL MUST MANDATE ATTENTION TO SEGREGATION OF SPANISH SPEAKING

In school districts which have more than one minority, all minorities must be served. Senate Bill 3883 does not address itself to this matter, and there is no requirement that the needs of all groups be served. At best, this is an oversight on the part of the drafters of the bill. At worst, it is in flagrant violation of the intent and spirit of federal court decisions such as the *Corpus Christi* case. It is very important to stress the fact that this bill must have provisions to insure that funds allotted under Senate Bill 3883 be allocated on an equitable basis to those districts which have more than one minority, so that all minorities might be served.

The establishment of guidelines and standards for the funding of projects and programs under this bill will not guarantee that funds will be expended solely for projects, programs or activities which will reduce or eliminate racial segregation or "racial isolation" in the public schools. One need only look to what has happened to large amounts of Title I funds.

A report of audit prepared by the HEW Audit Agency in 1968 for the State of California disclosed the need for improvements in management controls and procedures for Title I funds of the Elementary and Secondary Education Act of 1965.[27] This audit noted the need for improvement in several phases of operation of the program including the conduct of local projects, financial management, and State supervision. For example, Title I funds of approximately $930,000 provided to one county was used to construct, equip and operate a county-wide instructional television system (ITV). The Audit Agency concluded that this project did not meet federal requirements concerning concentration of funds in poverty areas.[28] Also, another school district obligated at least $229,386 of Title I funds for the purchase of equipment not related to approved projects.[29] True, such abuses cannot be eliminated even when there are formal guidelines and standards set forth for the appropriation and expending of educational funds, as the audit of Title I funds for the State of California indicates. It must be noted that California had among the strictest guidelines and standards in the nation for Title I funds. It is thus important to stress the need for enforcement provisions, and for monies to be set aside for such enforcement. Section 10 of Senate Bill 3883 states that the Secretary may determine that up to one (1) percent of any appropriation may be made available to him for evaluation of the authorized program.

---

[27] HEW Audit Agency Report, Audit Control No. 90074–09. Title I of the Elementary and Secondary Act of 1965, Administered by the State of California, December 23, 1968, p. 3.

[28] Ibid., p. 3, 7–14.

[29] Ibid., p. 3.

There is no provision for funds to be used to enforce any of the provisions of this act. Assuming that funds for enforcement are to come out of funds set aside for evaluation, it is quite clear that one (1) percent is totally inadequate. If funds are not to be wasted as in the past on programs and projects which do not intend nor will in fact result in desegregation of schools, then it would appear necessary that a larger amount, preferably in the range of five to ten (5-10) percent of any appropriation, be set aside by the Secretary of HEW for the enforcement of Senate Bill 3883. Otherwise, all the guidelines and standards in the world may be incorporated into this act and all will be meaningless if there is no provision for enforcement also included in this act.

IX. CONCLUSION

I cannot impress upon you too strongly the fact that if Senate Bill 3883 is passed as presently written, Mexican American and other Spanish Surname school children will be effectively excluded from the scope of benefits to be provided. If passed as presently written, the drafters of Bill 3883 may just as well have excluded Spanish Surnamed Americans from the definition of "minority group children" provided in Section 9(d)1. The effect would be the same.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, CORPUS CHRISTI DIVISION

(Civil action No. 68-C-95)

JOSE CISNEROS *v.* CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT

(June 4, 1970, Time: 11:08 A.M.)

RULING OF THE COURT

The COURT. Will everyone please be seated.

In Civil Action Number 68-C-95, a Civil Rights Class action, the following will constitute the Findings of Fact and Conclusions of Law, and may be amended and/or supplemented at a later date, but these Findings today will control and determine the disposition of the issues before us.

Firstly, this Court finds that it has jurisdiction and that this is a proper case action under Rule 23 of the Federal Rules of Civil Procedure.

Needless to say, this Court considers this to be a most important case. Not only because of the great interest that has been manifested by the large attendance of citizens in the courtroom, and the amount of time and space the news media have devoted to the coverage of the trial, but the Court realizes and understands that we are considering two of the most important aspects and interest of the school patrons and also the school administration: the taxes of money and the children.

Because it is an important case I want again to express my appreciation for the efforts of the attorneys who have appeared here, not only for their cooperation in providing the Court with all the relevant and pertinent evidence, voluminous data and statistics, but also well written briefs, and also for the expeditiously manner in which the evidence was presented.

This type of legal controversy, which is prevalent all over the country, has finally come to the City of Corpus Christi, as it has come to many other communities over our land, and the magnitude of the problem is reflected in the great volume of litigation and opinions which we lawyers are familiar with.

Because the United States District Courts are under a Mandate to expedite this type of litigation, and because this Court knows that school has just closed and the summer semester is beginning, and that the 1970-1971 school year term will begin in three (3) months, the Court believes it will serve the ends of justice, as well as the interest of the parties to this lawsuit, especially the School Administration, to present this opinion orally and not to have to, or not to wait to have it typed, reproduced and printed.

Although, as you could realize, it has not been an easy task. I have had the advantage of three (3) weeks of night and day studyingthese exhibits, this voluminous data, taking two brief cases to Miami, constantly reading the opinions and having them available to me as they are published. And also, thanks to the attorneys in the case, of having the advantage of having daily copy made of the proceedings and testimony.

One great advantage and help to the Court was the way and manner all the statistical evidence was worked and catalogued at the beginning of the trial, and which was offered and stipulated to early in the trial, and which was available to the Court for study for these three (3) weeks.

We also were fortunate in having available every recent appellate decision concerning these matters.

In reaching the decision in this case, I have carefully weighed and considered all of the evidence, and each and every witness's testimony was considered in the light of common sense, the witness's experience and qualifications, his interest in the case, his demeanor on the witness stand, whether or not he answered the questions directly and unequivocably, or whether he was vague or evasive, or whether he equivocated, and whether or not it appeared accurately in comparison with statistical data and evidence that was not disputed.

Although the statistical data and evidence was largely undisputed, I find as a matter of fact for the record that the data presented by the Plaintiff is accurate and correct as to student populations, percentage of ethnic groups, that is as we have called them in this trial, Anglo, Negro, and Mexican-American, locations of schools, and the make-up of the student population, the location and ethnic patterns of general population within this area, the number of teachers, the schools they are assigned to, and the ethnic background of each teacher in each school, and the location of past and present boundaries, the time and cost of construction of new schools, the cost of renovating of old schools, the number of children bused in the past and in the present, and who they were, and who they are.

I especially find the Plaintiff's Exhibits No. 4, 4–A, 4–C, and 4–D as accurate and very illuminating.

The same is true for Plaintiff's Exhibits 6–A, 6–B, 6–C, and Plaintiff's Exhibit 7, also Plaintiff's Exhibit No. 35, and Plaintiff's Exhibit 36.

The Court accepts as true and correct the other objective data and statistics offered by the Plaintiff.

Of course, most of this evidence, if not all, was furnished by the Defendant, and the Court is deeply appreciative of the cooperation, of the long, tiresome work that the School Administration had to undertake to furnish this data.

I also find that the Defendant's objective statistical evidence is true and correct, such as Defendant's Exhibits E, 2, 2–A, 3, 3–A, 4, 5, 6, 7, 9, 10, 11, 14, 15, and 16.

The Plaintiff's and Defendant's exhibits as mentioned mainly include objective evidentiary data over which there is no dispute, as I understand the parties, but I do understand that each side contends there are different factual and legal implications and conclusions to be drawn from this objective statistical evidence which the Court, of course, will have to decide.

As to the other exhibits, the Court will consider them and give to them whatever weight and credibility, as well as relevancy, the Court feels they deserve in deciding the factual and legal issues involved.

Finally, the Court recognizing that experts similarly trained, similarly educated, and with good intentions, do disagree over fundamental issues. And that is not only true in the field of education, but this Court sees it every day when we have trials with experts, where they disagree over the most basic and fundamental issues. And there has been some disagreements manifested during this trial that just could not be reconciled and the Court must use its own judgment to see that justice is done after carefully considering all of the evidence.

Although there has been a somewhat lack of basic empirical evidence which has been validated or demonstrated by experience or results, and the educators spoke of that often during the trial, the Court must decide this case on the evidence before it.

Now to the issues in the case—it appears to the Court that the controlling and ultimate issues, stated in general terms, are as follows:

Firstly, can Brown, 347 U.S. 483, and its progeny apply to Mexican-Americans in the Corpus Christi Independent School District, or stated in another way, is Brown limited to Negroes only?

Secondly, if Brown can apply to Mexican-Americans, does it under the facts of this case?

In another way, assuming Brown applies to Mexican-Americans, are the Mexican-American students segregated or in a dual school system?

Thirdly, because I think most of us agree that the Negroes in Corpus Christi are protected by the Fourteenth Amendment to the Constitution under Brown, as was a case involving blacks and whites, and later the Supreme Court and Fifth Circuit cases, the question or issue here is, do we have a dual or unitary school system as it affects Negroes in Corpus Christi?

Further, or fourthly, if we do have a dual school system here as defined by recent Fifth Circuit cases, and that Negroes and Mexican-Americans are denied their Constitutional rights under the Fourteenth Amendment, is this a de jure or de facto dual or segregated school system?

And finally, if we do have a dual system, how can the Court, and under what plans and programs, disestablish a dual school system and establish and maintain a unitary school system in contemplation and compliance with the recent Supreme Court and Fifth Circuit opinion?

And so, in determining the first general issue in this case, which is whether Brown can apply to Mexican-Americans in the Corpus Christi Independent School District, the Court now makes the following observations concerning the implication of Brown to this issue:

This Court reads Brown to mean that when a state undertakes to provide public school education, this education must be made available to all students on equal terms, and that segregation of any group of children in such public schools on the basis of their being of a particular race, cult, national origin, or of some readily identifiable ethnic minority group, or class, deprives these children of the guarantees of the Fourteenth Amendment as set out in Brown, and subsequent decisions, even though the physical facilities and other tangible factors may be equal.

Although these cases speak in terms of race and color, we must remember that these cases were only concerned with blacks and whites, but it is clear to this Court that these cases are not limited to race and color alone.

In this case, if the proof shows that the American, Mexican-Americans in the Corpus Christi Independent School District are an identifiable ethnic minority group, and for the reason have been segregated and discriminated against in the schools, in the manner that Brown prohibits, then they are certainly entitled to all the protection announced in Brown. Thus Brown can apply to American, Mexican-American students in public schools.

Having decided that Brown can apply to Mexican-American students in public schools, the Court now must determine whether under the facts of this case the Mexican-American student in the Corpus Christi Independent School District to fall within the protection of Brown.

The Court finds from the evidence that these Mexican-American students are an identifiable ethnic minority class sufficient to bring within the protection of Brown.

It is clear to this Court that Mexican-Americans, or Americans with Spanish surnames, or whatevery they are called, or whatever they would like to be called, Latin-Americans, or several other new names of identification, and parenthetically the Court will take notice that this naming for identification phenomena is similar to that experienced in the Negro groups, black, Negro, colored, and now black again, with an occasional insulting epitaph that is used less and less by white people in the South, fortunately. Occasionally you hear the word "Mex" still spoke in a derogatory way in the Southwest.

It is clear to this Court that these people which we have used the word Mexican-Americans to describe their class, group, or segment of our population, is an identifiable ethnic minority in the United States, and especially so in the Southwest and in Texas and in Corpus Christi. This is not surprising; we can notice and identify the physical characteristics, their language, their predominant religion, their distinct culture, and, of course, their Spanish surnames. And if there were any doubt in this Court's mind, this Court could take notice, which it does, of the Congressional enactments, Governmental studies and Commissions on this problem. And also the opinions, such as Hernandez versus Texas, 347

U.S. 475, a 1954 case; Judge Allred's decision in this case, Hernandez versus the Driscoll Consolidated Independent School District, Civil Action No. 13840; unpublished, Keys, et al, versus the School District Number 1, Civil Action 1449, District of Colorado; the Westminister School of Orange County versus Mendez, 161 Federal 2nd 774, Ninth Circuit, 1947; and also, and very importantly, the recent Federal Government's intervention in Marcos Perez, et al, versus The Sonorra Independent School District, Number 6, 224 Civil, San Angelo Division of the Northern District of Texas.

This Court further finds that the Mexican-American students in the Corpus Christi Independent School District are now separated and segregated to a degree prohibited by the Fourteenth Amendment in all three levels of the School System, elementary, junior high, and senior high. It is obvious to the Court from the evidence that the Mexican-Americans have been historically discriminated against as a class in the Southwest and in Texas, and in the Corpus Christi District. This Court is convinced that this history of discrimination as given by Dr. Thomas Carter, Dr. Hector Garcia, and Mr. Paul Montemayor is substantially correct.

Not only do I find that Mexican-Americans have been discriminated against as a class, I further find that because they are an identifiable ethnic minority that they are more susceptible to discrimination and this is not common to Mexican-Americans and Negroes alone, but it appears from history that any identifiable minority group, that is a different person, whether it be racial, ethnic, religious, or national origin, may quite often suffer from this problem.

It seems to this Court that the Mexican-American organizations, such as LULAC's and the G.I. Forum, and now MAYO, were called into being in response to this problem. This is why, perhaps, we are having so many studies, so many hearings, so many Government Commissions studying these problems, and so many publications and books being published concerning this very real problem.

Fortunately, the objective manifestations of this type of discrimination is gradually disappearing from our society. Nevertheless, this historical pattern of discrimination has contributed to the present substantial segregation of Mexican-Amercans in our schools. This segregation has resulted in a dual school system.

The Court also finds that the Negro students in the Corpus Christi Independent School District are also segregated to a degree prohibited by law which causes this to be a dual rather than a unitary school system.

The Court's finding that the Mexican-American and Negro students are substantially segregated from the remaining student population of this district is based primarily upon the undisputed statistical evidence. This is also, and I also find, true of the faculty.

The Court is of the opinion that by placing Negroes and Mexican-Americans in the same school does not achieve a unitary system. As contemplated by law, a unitary school district can be achieved here only by substantial integration of the Negroes and Mexican-Americans with the remaining student population of the district.

As to whether or not the desegregation which has resulted in a dual, in this dual system, is de facto or de jure, the Court is of the opinion that some of the segregation was of a de facto nature; that is, because of the socio-economic factors which caused Negroes, Mexican-Americans to live in the corridor, which we have described here as where they live, and similar to the ghettos of other cities, and of the pattern of the geographical and demographic expansion of the city towards the south and southwest.

But this segregated and dual school district has its real roots in the minds of men, that is, the failure of the school system to anticipate and correct the imbalancing that was developing. The Court is of the firm opinion that administrative decisions by the school board in drawing boundaries, locating new schools, building new schools and renovating old schools in the predominantly Negro and Mexican part of town; in providing an elastic and flexible and subjective transfer system that resulted in some Anglo children being allowed to avoid the ghetto, or corridor schools, by bussing some students, by providing one or more optional transfer zones which resulted in Anglos being able to avoid Negro, Mexican-American schools and not allowing Mexican-Americans or Negroes the option of going to Anglo schools; by spending extraordinarily large sums of money which resulted in intensifying and perpetuating a segregated dual school system; by assigning Negro and Mexican-American teachers in disparity ratios to these segregated schools; and the further failure to employ a sufficient number of Negro and American school teachers; and the failure to provide a majority to minority transfer rule; all of which, regardless of all explanations and regardless of all expressions of good intentions, was calculated, and did maintain and promote a dual school system.

Therefore this Court finds as a matter of fact and law that the Corpus Christi Independent School District is a de jure segregated school system.

The defendants have attempted to show that the Negroes and Mexican-Americans are spread throughout the city. To what extent this is true, nevertheless, the undisputed statistics show that the Negroes and Mexican-Americans are substantially segregated in the school system. So this would mean that the schoolhouse is more segregated than the neighborhoods.

The defendants argued that they did not have the benefit of hindsight, which we all appreciate, but this Court feels that there were sufficient warnings given to the school board by interested citizens and groups to alert them to this problem, which any school board member or superintendent should know might be a problem in this day and age.

This Court is not here to place blame, criticize, or find fault, but this suit was brought to this Court by the plaintiffs alleging a denial of rights protected by the Fourteenth Amendment. And it is this Court's duty to adjudicate these grivances. The courts do not go out and look for these controversial problems to solve, they are brought to the courthouse by human beings with a grievance, and that is where they should be brought.

This Court knows that board members change from time to time; this Court knows that in our complex society of today of large institutions that we do have problems of personal responsibility or of collective responsibility, individual fault, or corporate fault, private blame or institutional blame. Moral man and amoral society, as Neihbur puts it, is still with us. But whatever was the personal and individual intentions of the school board members, who I noted did not testify in this case, the board had the ultimate responsibility, and I find that the board of trustees of the Corpus Christi Independent School District has not discharged its heavy burden to explain its preference for what this Court finds is a segregated and dual school system.

I cannot and do not accept the explanations given by the school administration for not only maintaining a segregated school system and dual school system, but really what appeals to me to be a program which will intensify and magnify the problem as time goes on.

This Court is of the opinion that there are reasonable available methods to effect a unitary system, and this Court finds that this dual system can be disestablished without significant administrative, educational, economic, or transportation costs. And I appreciate the plaintiffs bringing the Court's attention to they are not here asking for a large number of children to be bussed, and neither is the Court, and it is obvious that the faculty and the administrative staff is even more segregated than the schools. There is no real dispute here.

The school must assign Negroes and Mexican-American teachers throughout the system on the same ratio of percentages they are in the total teacher and staff population. Furthermore, the school board must immediately take steps to employ more Negro and Mexican-American teachers.

And as to the dire effects the defendant claims will result if there is more transportation of students than is presently done, the Court says that the children who are being bussed now make no such claims, nor have I been shown any harmful effects on the individual children that will outweigh the harmful effects on the Negro and Mexican-American child who is in a segregated and dual system. That is my opinion after giving careful attention to all of the testimony of the experts.

The physical and social inconveniences that some children might suffer will not be as severe or as prolonged as compared to the psychological and emotional trauma, and scarring, and crippling that minority children suffer when they feel that they are rejected or not accepted.

As to the educational benefits—this Court is of the opinion that the Anglo child and the Negro and the Mexican child will benefit by a unitary system, and I think the plaintiffs' statistics and study show this, especially those on the amount of schooling Anglos and Mexican-Americans get in duration of time. Our nation is becoming polarized and fragmented, and this has the effect of radicalizing many of our young people. It is not enough to pay lip service to the Constitution by tokenism.

While many of our institutions has a tendency to divide us, religious institutions, social institutions, economic institutions, political institutions, the public school institution, as I see it, is the one unique institution which has the capacity to unite this nation and to unite this diverse and pluralistic society that we have. We are not a homogeneous people; we are a heterogeneous people, we have many races, many religions, many colors in America. Here in the public school system as young Americans, they can study, play together, inner-act, they will get to know one another, to respect the others' differences, to tolerate each other even though of a different race, color, religious, social or ethnic status.

But be that as it may, the Supreme Court has resolved that problem for the district court by saying that separate education, educational facilities are inherently unequal and therefore unconstitutional.

Therefore the Court finds for the plaintiffs and the injunctive relief prayed for will be granted.

Because the courts, especially in the south, are finding that a bi-racial or human relations committee appointed by the court can aid the school boards and the courts through these trying times, and in these complex problems of creating a unitary system and maintaining them, this Court is of the opinion that a human relations committee appointed by this Court will be of great help. And therefore the plaintiff and defendant will immediately provide the Court with a list of fitfeen names each of patrons of the Corpus Christi Independent School District, which list shall include the name, address, and telephone number of each person, and each list shall include five Negroes, five Anglos, and five Mexican-Americans, and the Court will choose from this list two names for each of the five names submitted which will provide the Court with a committee of twelve persons, four of which will be Anglo, four will be Negro, and four will be Mexican-Americans. The Court will charge this twelve member human relations committee with the responsibility of investigating and consulting and advising with the school board periodically with respect to all matters tending to promote and to maintain the operations of a unitary school system, wihch will satisfy the law.

Because this opinion and partial final judgment involves a controlling question of law, as to which there is substantial grounds for differences of opinion insofar as this Court is of the opinion that Mexican-Americans are an identifiable ethnic class who have suffered de jure and de facto segregation and who are protected as a class under the Fourteenth Amendment and the laws of the United States, and who are now being subjected to a dual school system in violation of the Fourteenth Amendment and the laws of the United States, and the Court, that the Court has found that they should be and are protected, and that they should be in a unitary school system, and therefore, the Court is of the opinion that the defendant may utilize the procedures of 28 United States Code Annotated, Section 1292 to the end that such an interlocutory immediate appeal, if the defendant should desire to do so, would materially advance the ultimate determination of this Court. But this opinion and the judgment to be entered immediately will not be stayed pending this interlocutory appeal, if one is made because of the defendant's right to an emergency appeal under Rule 2 and Related Rules and Practices of the Court of Appeals for the Fifth Circuit, and further because the parties have already had the transcript made of all the testimony and the voluminous evidentiary data which has been introduced into evidence, is already catalogued, and in such a manner that time will not be a real problem.

The plaintiff and defendant will submit to this Court by July the 15th a final plan which will achieve a unitary school system which will be educationally, administratively, and economically reasonable. It shall include a majority to minority transfer rule as suggested in Singleton, et al, versus Jackson Municipal Separate School District, No. 29226, decided on May the 5th, 1970, by the Court of Appeals for the Fifth Circuit.

The deputy courtroom clerk of the court, Miss Baker, shall select the twelve names which will comprise the human relations committee by arranging all six stacks of five names in an alphabetical manner and taking the top two names from each stack which will provide a human relations committee of twelve persons, four of which will be Negro, four will be Anglo, and four will be Mexican. The clerk will communicate immediately with these twelve persons and inform them that the Court wishes that they serve on this human relations committee, and if any should decline to serve, the Court then will take the next name from the particular stack. The Court has not seen nor looked at those names and does not know who they are except the Court did ask the lawyers, and do ask the lawyers to give us competent people, which I am sure they have done.

The Court Reporter will immediately transcribe these oral findings of fact and conclusions of law in this opinion and will file it with the clerk of the court and provide each party with a copy.

This Court shall retain jurisdiction of this case until it is satisfied that the dual system has been disestablished and an unitary system is in existence for a sufficient length of time to indicate the dual system will not tend to be re-established.

The plaintiff will submit to the Court immediately after consultation with the defendant's attorneys, and after giving the defendant an opportunity to approve it as to form, an appropriate judgment not inconsisent with this opinion.

The Court is adjourned.

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, CORPUS CHRISTI DIVISION

(C. A. No. 68-C-95)

JOSE CISNEROS, ET AL v. CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT

PARTIAL FINAL JUDGMENT

Pursuant to the opinion of the court rendered in open court on June 4, 1970, which is incorporated herein by reference wherein the court set forth Findings of Fact and Conclusions of Law, the court on this the 4th day of June, 1970, renders Partial Final Judgment as follows:

I.

On the merits of plaintiffs' claim pertaining to the present and past assignment of Negro and Mexican-American students the court is of the opinion that the facts and law are with plaintiffs and against defendant and judgment should be rendered for plaintiffs and against defendant.

It is therefore ordered, adjudged and decreed by the court that the present assignment of Negro and Mexican-American students, by the defendant Corpus Christi Independent School District does not conform to law.

It is further ordered, adjudged and decreed by the court that the defendant Corpus Christi Independent School, the members of its Board of Trustees, and their successors in office, and the agents, officers and employees of the said district, and all those in active concert with them be, and they are hereby, permanently enjoined from discriminating on the basis of race, color or ethnic origin in the assignment of students, teachers and staff to the various schools of the district. It is further ordered that defendant School District shall take the following affirmative action:

1. Assign teachers and staff personnel to various schools so as to eliminate either racial or ethnic identifiability of any schools in the system and further so as to achieve an assignment of faculty and staff at each school in approximate proportion to the racial and ethnic composition of the school system's entire faculty and staff at the same school level, that is, elementary, junior high and high school.
2. In the consideration of new schools or expansion of existing facilities give consideration to the achievement or preservation of a reasonable mixture of Mexican-American and Negro students with other students in each new or expanded facility.
3. File in this court on or before July 15, 1970, and simultaneously serve upon plaintiffs' counsel, a plan for the revised assignment of the student population to be effective before the commencement of the regular school term for the fall of 1970, which plan will conform to law. Such plan shall in the discretion of the defendant include the relocation of boundaries or attendance zones, pairing of schools, grouping of schools, bussing or other device which in the judgment of the defendant school district will promote the objective of a unitary school system taking into consideration the pertinent educational, administrative and economic factors.

Such plan shall include a majority-minority right of transfer by Mexican-American or Negro students. Plaintiffs shall likewise file a similar plan.

This court has heretofore requested the parties to nominate citizens who reside in the area of the defendant district to serve as an Advisory Committee to this court and to the defendant district. The court shall designate in a subsequent order the citizens who shall constitute the Advisory Committee. Said Committee shall be granted access to all records of the defendant and shall submit proposals and advice to the district and to this court affecting the achievement operation and maintenance of a unitary school system and all matters pertinent thereto, including but not limited to, new construction and new sites.

Pursuant to a stipulation of the parties, this court has heretofore severed the trial of a specific issue of this case, to-wit: the institution and maintenance of a sequence or grouping system for students. The court makes no finding with reference to the facts or law pertinent to such issue but retains jurisdiction of the case for the further trial and decision of said issue.

The court further retains jurisdiction of the case for the purpose of amendment, expansion or alteration of this judgment pursuant to the plans to be filed in this court on or before July 15, 1970.

This judgment is a final judgment of the merits of the case but is not a final judgment insofar as to the appropriate remedial action of the court in the premises. In making this partial final judgment, the court finds under 28 U.S.C.A. Section 1292 that this judgment involves a controlling question of law as to which there is substantial ground for difference of opinion insofar as this court has rendered judgment that Mexican-Americans are an identifiable ethnic group who are subject to the protection of the Fourteenth Amendment of the Constitution and of the laws of the United States and have been subjected to both de jure and de facto segregation.

Senator PELL. If Mr. Henry Ramirez is in the audience, will he come forward?

Senator MONDALE. He is not here yet.

Senator PELL. Mr. Ruiz.

STATEMENT OF MANUEL RUIZ, MEMBER, U.S. COMMISSION ON CIVIL RIGHTS

Mr. RUIZ. Gentlemen, it was with profound interest that I came to the city of Washington from the city of Los Angeles, because I had read, for the first time in my life phraseology in a proposed Federal bill on education which gave recognition to various ethnic segments of our minority group children.

Section 9(d)(1) of the act refers to the American Indian. It says: "French, Orientals, Mexicans, Puerto Ricans, Cubans, and children of other Spanish origin or ancestry."

The bill as presently written, however, does not provide, as indicated, for the special problems of the Spanish, Mexican American ethnic minority, which is principally isolated in de facto concentrations of populations.

In order to provide for the special problems of the Mexican American segment of our population, if that is what this committee intends to do, it is suggested that the authorized appropriation—and listen to this—be doubled—and that the increase in funds be earmarked and devoted to persons of Mexican and Spanish origin who are specifically identified in the act and who come from an environment, according to the act, wherein the dominant language is other than English, therefore, as the act states, are educationally deprived.

Now, this kind of recognition by our legislators, gentlemen, should have been forthcoming a long time ago. In 1923, the Supreme Court of the United States, in the case of *Meyer* v. *State of Nebraska* and other related cases, announced the doctrine that a foreign language had the propensities of property and was susceptible of constitutional protection in the pursuit of life, liberty, and happiness.

Said the U.S. Supreme Court, copy of which opinion is annexed by way of exhibit to my exposition, "The protection of the Federal Constitution extends to those who speak other languages as well as to those who speak English."

The U.S. Supreme Court in said opinion, which is the law of the land, subscribes to the advantages of the right of a child to retain his first language and at the same time to become proficient in the English, as a patriotic American citizen.

It is my belief that a special amendment should be added to Senate bill 3883 as presently proposed in committee, so that, in the process of the mechanics of physical desegregation, the special problems of educational integration of ethnic minorities whose first language is not English be provided for and protected.

The facts and contentions which support the need for the requested amendment, gentlemen, to the bill are contained in the exhibits which I have submitted for your perusal.

The following language should also be added firstly to the authorized activities eligible for financial assistance; that is, the words "educationally deprived minority group children who are in need of language skills."

Present section 6(d), as amended, would then read as follows:

> **Section 6(d). Development and employment of new instructional techniques and materials designed to meet the needs of racially isolated school children and the needs in language skills of educationally deprived minority group children.**

The community gap which denies equality of educational opportunity to racialy isolated children national origin minority groups requires that the act under consideration be explicit in its language to be placed in parity with title VI of the Civil Rights Act of 1964.

Secondly, there need be no pending process of desegregation as to those racially isolated ethnic segments wherein the dominant language is other than English.

The additional funding requested for these ethnically impacted areas would constitute a second part of the bill which is not presently provided for. By adding a second part to the bill wherein funds would be devoted to ethnic groups having non-English language problems, the portions of the bill as now written relating to court order and voluntary desegregation would assure emergency fundings for the southern part of the United States. At the same time, the distinguishable problems arising out of language in other areas of the United States would be provided for, and the bill accordingly will have nationwide impact and scope.

As you know, the Office of Civil Rights of HEW has issued a policy memorandum which sets for the responsibility of school districts to provide equal educational opportunity to national origin minority group children deficient in English language skills. The bill is presently silent as to this concept but could easily provide for the same in a second part to the bill.

That this committee may know why additional separate funding would be used and is required, reference is being made to exhibits wherein some research is taking place. More funds are necessary to solve the problems relative to the needs and language skills of educationally deprived minority group children who reside in ethnically impacted areas.

Exhibit II which I have submitted sets forth the evolutionary process which is taking place in instructional techniques and materials designed to fulfill the needs in language skills.

The avid interest of educational panelists as well as the rapid gains which are taking place in the yet unsolved problems and issues of effective language communication may be noted in exhibit II which I have submitted. The evolving programs in teacher training, for effective lines of communication, applies to all ethnic groups wherein English is a second language as already specified in the bill.

The desegregation process intended by the bill insofar as the Negro child is concerned will be an exercise in futility insofar as the Mexican American is concerned since he has special problems and those problems are unrelated to those of the Negro child, although generally speaking far more serious in the field of education.

That this senatorial commitee may better perceive what I have just stated, reference is made to exhibit V, which gives us a sociological overview of the Mexican American in the rural areas of the United States as well as the urban areas of the United States.

What this means from a racial impact point of view is set forth in exhibit V by Julian Samora, professor of sociology, University of Notre Dame, and Ralph Guzman, assistant professor of government, Los Angeles State College in Los Angeles, Calif.

There is another exhibit which offers pertinent remarks relating to the bilingual, bicultural child, which is identified in your bill.

In concluson, we are suggesting an accommodation in the bill to our special problems. That is, that a special amendment be added to Senate bill 3883 to assure that in the process of the mechanics of physical desegregation, the special problems of educational integration of ethnic minorities whose first language is not English be provided for and protected, and secondly, that the proposed authorized appropriation be materially increased and that the increase be earmarked and devoted for the purpose submitted and suggested in the various attached exhibits that I have submitted for your inspection.

(The prepared statement of Manuel Ruiz with accompanying exhibits follows:)

PREPARED STATEMENT OF ATTORNEY MANUEL RUIZ, MEMBER, U.S. COMMISSION ON CIVIL RIGHTS, ON S. 3883 EMERGENCY SCHOOL AID ACT OF 1970, JULY 10, 1970

REQUEST

That a special amendment be added to Senate Bill 3883, to assure that in the process of the mechanics of physical desegregation the special problems of educational integration of ethnic minorities whose first language is not English be provided for and protected.

That the proposed authorized appropriation be doubled, and that the increase be earmarked and devoted for the purposes submitted and suggested in the attached Exhibits which are set forth in this statement.

INTRODUCTORY

I am proud to appear before this committee as a Spanish surnamed American.

Among the Spanish surnamed Americans, much has recently been heard of the Mexican American in our body politic. This is because the Mexican American has been here longer than our other western hemispheric Hispanic cultural brothers which includes the Puerto Ricans and the recent Cuban immigrants. Other spanish speaking Americans are joining the Mexican American in the rising crescendo of concern relating to the equal protection of the law in education.

When a Mexican American examines proposed legislation which may concern him and members of his family, he looks at the law from the vantage point of one who was here since before the Pilgrams arrived at Plymouth Rock. He is indiginous to the soil of the Southwestern part of these United States and feels as though he belongs.

His point of reference to what this Committee does is different than that of other assimilated Europeans or blacks. For example, the Mexican American knows that all current American land titles which represent the wealth of the nation in private real estate holdings in the Southwest can be traced back to a Mexican ancestor if the original land title was issued before 1848. The Mexican American like the American Indian and the Spaniard has an independent and a fierce pride. He cannot nor will he deny his kinship to the American soil. He is totally American in the sense of being at home.

Mexican Americans did not have negro slaves and therefore suffer not from frustrations, guilt complexes, nor from the subjective urge to set the record straight in this respect, as do many other persons.

When a Mexican American reads testimony before this committee that existing Federal educational assistance programs are inadequate to do the job; when he is informed that Title IV of the Civil Rights Act of 1964 was underfunded and weakened by statutory language which has prohibited effective action to eliminate racial isolation; when his attention is called to the fact that Title I of the Elementary and Secondary Education act has not been effective in spite of the enormous appropriations in excess of one billion annually, because the funds are so diluted, he simply philosophizes on the needless waste. After all, he has never been a part of the policy and decision making mechanism of the government.

When that Mexican American, however, is invited by this Committee he does so to offer suggestions from a different educational background. He is hopeful that his suggestions as to how funds should be appropriated and what channels said funds should go in addition to being listened to, may be considered.

That Mexican American who appears here today is less concerned with the Title of the statute, or whether the excuse or reason for financing be desegregation, racial isolation, intergration or discrimination. With or without all of the retoric and cliches his problem has always remained the same. His hope is that he will be able to keep his first language and at the same time become proficient and excel in the English language and at the same time receive quality education.

His principal concern is to fight for the educational accomodation to which he is entitled and which will make him a more valuable American citizen.

It was with profound interest therefore, that I came to this city of Washington from the state of California. I read for the first time in my life phraseology in a proposed federal bill which gave recognition to various ethnic segments of our minority group children. Section 9 (d) (1) of the Act, refers to the American Indian. It says French, Orientals, Mexicans, Puerto Rican, Cuban, and children of other Spanish origin or ancestry.

I wish to commend this Committee for the vigor and timeliness of this American first in this type of legislation. This kind of recognition by our legislators should have been forthcoming as long ago as the signing of the Treaty of Guadalupe Hidalgo which brought a cessation of military activities between the United States and Mexico in 1848. This kind of fortitude should have been evidenced by your predecessors no later than the year 1923, when the Supreme Court of the United States in the case of Meyer vs State of Nebraska and other related cases, reported in 262 U.S. 624, et seq., announced the doctrine that a foreign language had the propensities of property and was susceptible of constitutional protection, in the pursuit of life, liberty and happiness. Read the case, its an eye opener.

Said the United States Supreme Court, copy of which opinion is annexed by way of an exhibit in this exposition, "The protection of the Federal Constitution extends to those who speak other languages as well as to those who speak English."

The United States Supreme Court in said opinion, which is the law of the land subscribes to the advantages of the right of a child to retain his first language and at the same time become proficient in the English, as a patriotic American citizen.

It is my humble belief that a special amendment should be added to the Senate Bill 3383 as presently proposed in committee, so that in the process of the mechanics of physical desegregation the special problems of educational integration of ethnic minorities whose first language is not English be provided for and protected.

A further and very special request is made that the proposed authorized appropriation be doubled, and that the increase to be earmarked and devoted for the purposes which we are submitting in the papers remitted to your committee this morning.

The facts and contentions which support the need for the requested amendment to the bill are contained in the exhibits which are referred to in this report by number, copies which I am presently remitting to the members of the Committee for its files.

Subject matter

On May 29, 1970, the Office of Civil Rights of HEW in pointing out compliance deficiencies relating to Title VI of the Civil Rights Act of 1964 issued a memorandum which set forth the responsibility of school districts to provide equal educational opportunity to National origin minority group children deficient in English language skills. Said memorandum appears herein as Exhibit I.

Exhibit I.—Under Senate Bill 3883 it is going to be the duty and responsibility of the Secretary of HEW to decide how states shall be funded and to what extent grants will be made to carry out the purposes of the Act. The Secretary who is to spend the money has in said policy statement expressed concern about the educational status of national origin minority group, and particularly children from said groups who are deficient in English language skills. This concern should be written directly into the bill.

The following language should also be added to the "authorized activities" eligible for financial assistance, i.e. the words, "educationally deprived minority group children who are in need of language skills.

Present Sec. 6 (d) as amended would then read as follows:

"SEC. 6 (d) development and employment of new instructional techniques and materials designed to meet the *needs* of racially isolated school children, AND THE NEEDS IN LANGUAGE SKILLS OF EDUCATIONALLY DEPRIVED MINORITY GROUP CHILDREN."

The communication gap which denies equality of educational opportunity to racially isolated children of national origin minority groups requires that the Act under consideration be explicit in its language to be placed in parity with Title VI of the Civil Rights Act of 1964. This is of deep concern to the Secretary of HEW. The policy statement of the Department of HEW is a matter of record, and as stated is made a part hereof by way of Exhibit I.

Exhibit II.—That this Committee may know that some research is taking place and that more funds are necessary to solve the problems relative to the needs in language skills of educationally deprived minority group children relevant exhibits have been added to this report. Exhibit II sets forth the evolutionary process which is taking place in instructional techniques and materials designed to fulfill the needs in language skills. It will be noted that the ordinary and regular school curriculum wherein it is assumed all children come from English speaking homes cannot be adequately communicated to Mexican-American children, who thereby become dropouts before their education gets started. This is born out by the statistics in another report being submitted to this subcommittee on education.

The avid interest of Educational Panelists as well as the rapid gains which are taking place in the yet many unsolved problems and issues of effective language communication may be noted in said Exhibit 2. The evolving programs in teacher training, for effective lines of communication, applies to all ethnic groups wherein English is a second language as specified in Section 9(d)(1) of Senate Bill 3883. The desegregation process intended by the Bill will be an exercise in futility insofar as the Mexican-American child is concerned unless these special problems are kept uppermost in mind and properly funded and provided for in the Bill.

Exhibit III.—Some of our legislators may ask the questions: Who is the Mexican-American? How is he identified? The purpose of Exhibit III which is made a part of this dissertation by reference is to identify the Mexican-American, subject matter of our inquiry. Dr. Julian Nava, a Mexican-American, who last week in Los Angeles, California, was elected President of the Board of Education of the second largest school district in the United States has a paper on the subject which I am submitting. Mr. Vicente Jimenez, Commissioner

in the office of Equal Employment Opportunities also identifies the Mexican-American. These papers on identification will answer many questions.

Exhibit IV.—The problems that Mexican-American children face are American problems, are rooted in America, and will be resolved in the American legislative and political arena as intended by this act. That this Senatorial Committee may better perceive what has just been stated, reference is made to Exhibit IV which gives us a Sociological overview of the Mexican-American in the rural areas of the United States as well as the urban areas of the United States.

What this means from a racial impact point of view is set forth in Exhibit IV by Julian Samora, Professor of Sociology, University of Notre Dame, and Ralph Guzman, Professor of Government, California State College in Los Angeles, California.

Exhibit V.—Exhibit V by Elizabeth Ott, Director of Language Bilingual Program at the Southwest Educational Development Laboratory, offers pertinent remarks relating to the bilingual bi-cultural child which is identified in Section 9(d)(1) of the Act. The second portion of Exhibit V contains a summary of two conferences to identify achievement level of Mexican-Americans.

Exhibit VI.—The comments in Exhibit VI by Eugene Gonzalez, Associate Superintendent of Public Instruction in California are material. They refer to a challenge which can be met without pickets, demonstrations, walkouts or walk-ins.

Exhibit VII.—The final Exhibit which bears number VII relates to foreign language guidelines set by the Supreme Court of the United States in the case of Meyer -vs- Nebraska, reported in 242 U.S. 1042. This case announces the doctrine that the protection of the Federal Constitution extends to those who speak other languages as well as those who speak English. The Supreme Courts decision reinforces the fact that this committee is on firm ground in providing for the needs of the bi-lingual and bi-cultural child in the area of ethnic minorities who suffer the vicissitudes of racial isolation and segregation. That this need must be paramount and constantly kept in mind while in the process of providing emergency aid and funds for desegregation.

EXHIBIT I

POLICY STATEMENT BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE ON EDUCATIONAL OPPORTUNITY TO RACIALLY ISOLATED CHILDREN OF NATIONAL ORIGIN MINORITY GROUPS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 25, 1970.

MEMORANDUM

To: School Districts With More Than Five Percent National Origin-Minority Group Children.
From: J. Stanley Pottinger, Director, Office for Civil Rights.
Subject: Identification of Discrimination and Denial of Services on the Basis of National Origin.

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights and revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chnese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educa-

tional program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criterial which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

Exhibit II

Evolutionary Process Which is Taking Place in Instructional Techniques and Materials Designed to Fulfill the Needs in Language Skills of Educationally Deprived Minority Group Children.

PANELS: ENGLISH AS A SECOND LANGUAGE

CHAIRMAN: Leonard Olguin, Consultant, Mexican-American Education Research Project, California State Department of Education, Los Angeles.

PANELISTS: Virginia Dominguez, Consultant for English-as-a-second-language, Los Angeles Unified School District. Harold Wingard, Director of Foreign Languages, San Diego City Unified School District

Harold Wingard, Foreign Language Director for the San Diego City Unified Schools, pointed out that too many English-as-a-second-language programs are only token *efforts to teach English to a child for whom it is a foreign language.* He said that programs that provide for a 20-minute ESL class once or twice a week will not have much success.

He said that a child must be provided with an educational curriculum in his own language, or he obviously cannot acquire the skills and the knowledges that are necessary for him to have to be able to function effectively in society.

He described the ideal bilingual program as a school situation wherein all pupils would have their educational program presented to them in more than one language.

Leonard Olguín, Consultant, Mexican-American Education Research Project, California State Department of Education, said that Spanish-speaking children who are learning the English language are confronted with problems that are pricise rather than general. He explained that when all the habits of functioning in the Spanish language are instilled in an individual's mind *first*, the problems encountered in learning the English language are precise, predictable, and can be surmounted with the help of a skillful teacher. As an example, Mr. Olguín pointed out that in English, the volume—that is, the rate of flow of air used in producing words—is many times greater than the volume of air used to produce words in Spanish. He said that this difference causes the student to hear certain sounds and to reproduce them in a distorted manner.

Mr. Olguin explained that to ensure maximum efficiency in the teaching of English as a second language, the teacher must know about the first language and must understand some of the difficulties an individual may experience while learning English.

Virginia Dominguez, English as a second language Consultant for the Los Angeles Unified School District, stated that the format of a lesson in English as a second language should be clearly understood by teachers of English as a second language. She said that a lesson should contain dialogue and structure, and it should be presented through simple manipulative media: hand puppets, flannel board cut-outs, comic strips, filmstrips, the overhead projecter, and marionettes. There is an infinite variety of uses for manipulative materials in teaching English as a second language.

Mrs. Dominguez emphasized the importance of making the dialogue envelop *ideas* rather than limiting it to a parroting of phrases. She said that choral speaking is a very effective technique in teaching English as a second language.

Mrs. Dominguez said that the child should be involved in learning the English language during every activity throughout the day.

Evolving of Educational Programs in Teacher Training Institutions Affecting Mexican-American Students

CHAIRMAN: Charles Leyba, Professor of Secondary Education, California State College at Los Angeles

PANELISTS: Pete Sanchez, Coordinator of Mexican-American Educational Programs, U.S. Office of Education, San Francisco. Xavier Del Buono, Consultant, Bureau of Compensatory Education Community Services, California State Department of Education. Gloria Bray, Teacher, Los Angeles Unified School District; and Officer of Los Angeles Teachers' Association

Panelists agreed that teacher-training institutions must recruit and retain more Mexican-Americans for the teaching profession with whom Mexican-American students may identify. Students could say, "This is my type of man; this is my type of woman. They have done it, and I will do it also."

Charles Leyba suggested that colleges establish community advisory committees to assist in the recruitment of students who have expressed an interest in working with children, but for whom there is almost no prospect of going to college. The students selected would enter a special program, which would include work experience, for which they would receive both academic credit and money, and special seminars that deal with human relations and the academic problems which students bring to school.

"During the program, students would be expected to do outside work in schools serving a Mexican-American community. If 60 of these students graduate as teachers and go to work in the Los Angeles area, you will have raised the number of Mexican-American teachers in the Los Angeles area by 25 percent; in four years, you will have raised it by 100 percent." Mr. Leyba said.

Panelists agreed that such programs should be established; they stressed the need for similar efforts to train Mexican-American teachers for service in rural areas and in migrant education programs. The Migrant Teacher Assistant Mini-Corps Program was cited as an excellent supplementary training program for college students.

Funds are necessary if such programs are to be instituted and continued. Panelists suggested that financial support for teacher training programs might be obtained from the federal government under the provisions of the Education Professions Development Act or from the state under the provisions of California's McAteer Act.

Panelists reminded the audience *that programs are needed* to train and retrain all teachers of Mexican-American students, and that colleges and universities have an important responsibility for helping to meet the needs of the teaching profession.

Equal Educational Opportunities

CHAIRMAN: Maurice Schneider, Consultant, Bureau of Intergroup Relations, California State Department of Education, Sacramento

PANELISTS: Joe Aguilar, Director, Office of Intergroup Relations, San Bernardino City Unified School District. Ernest Robles, Vice-Principal, Wash-

ington Elementary School, Riverside Unified School District. John Camper, Project Education Specialist, Bureau of Adult Education, California State Department of Education, Los Angeles. Robert Carvajal, Board Member, Colton Unified School District. Bea Hernandez, Office Manager, Operation Contact, Dependency Prevention Commission, San Bernardino County

Well integrated schools appear to offer part of the answer for seeking equal educational opportunities for Mexican-American pupils, according to Maurice Schneider, Consultant in the Bureau of Intergroup Relations, California State Department of Education.

Efforts to improve home and school mutual understanding are sorely needed, stressed Mrs. Bea Hernandez, who works in a San Bernardino community referral center called Operation Contacts.

Joe Aguilar, Director, Office of Intergroup Relations, San Bernardino City Unified School District, pointed out that the Mexican-American needs to be taught about his cultural heritage. This, he said, would help Mexican-Americans to build strong self-images. Such a buildup, he intimated, would strengthen such citizens in their participation in all social activities—particularly in school.

Robert Carvajal, Board Member of the Colton Unified School District, indicated that the Mexican population was apathetic to the conditions of de facto segregation. He stated that if Mexican-American citizens would face the fact that de facto segregation does exist, they would cause changes to be made in the community which would break up the barrios and cause changes in school personnel hiring practices, and soon there would be genuine equal educational opportunities.

Ernest Robles, Vice-Principal, Washington Elementary School, Riverside Unified School District, pointed out that educational bodies have been spending a lot of time in diagnosing the problems of minority groups, but they have not been able to proceed to the prescriptive stage. He said that the "melting pot" philosophy does not apply to the Mexican-American because the Mexico-United States umbilical cord has not been severed, and the immigration of Mexicans to the United States will continue for a long time. Because of this influx, Mr. Robles said, *we must devise an effective way to educate pupils of Mexican descent.*

John Camper, Consultant in the Bureau of Adult Education, said that the schools have a powerful responsibility for teaching every child that he has value. He said that much of this teaching should be accomplished through accurate presentation of the valuable contributions made by ethnic groups throughout the history of this country.

Mr. Camper added that children with different backgrounds gain much from going to school with one another.

A lady in the audience said that schools in her district are completely integrated but that Mexican-American children are still doing poorly. She suggested that a stumbling block to the success of these children is the poor attitude of the teachers. Without a thorough understanding of the children being taught, she added, a teacher can misinterpret, misunderstand, and thus fail to communicate with them.

The panelists agreed that there were problems throughout the state which were caused, unfortunately, by the attitudes of teachers and the attitudes of administrators.

The second session was devoted to a discussion of the presentations made in the first session. The following comments are representative of those made at this session:

That's what it's all about—attitude.

I think that we should work toward the day when we do not identify ourselves as Mexican-Americans.

This is the first of these conferences that I have attended. I think this has been very challenging to me because I am a superintendent of schools, and I have a Spanish surname.

Just to move a person out of a ghetto or barrio without changing the individual is not doing very much.

The great problem of Mexican-Americans in the State of California is not that they are bilingual, but that they have low language skills in both Spanish and English.

We need to come up with strongly worded statements that effectively express our challenges to superintendents and board members.

I think I often use the word for love in the Greek sense, "Philos,"—"love for humanity"—and this is one thing that teachers very often forget.

The teachers, administrators, and board members are going to have to be prepared to try new programs.

I believe that when you desegregate the schools you must provide programs that will offer the children being integrated the most positive experience.

Effective Parent and School Communication

CHAIRMAN: Walt Symons, Assistant Superintendent, Alum Rock Union Elementary School District, Santa Clara County

PANELISTS: Assemblyman William Campbell, 50th Assembly District. Arnold Rodriguez, Director, Community Relations, Los Angeles Unified School District. William J. J. Smith, Project Education Specialist, Bureau of Adult Education, California State Department of Education. Tony Sierra, Board Member, Calexico Unified School District.

Walt Symons, Assistant Superintendent, Alum Rock Union Elementary School District, Santa Clara County, opened the session by pointing out that in order to understand a child in *any* classroom, something must be known of the child's frame of reference. "This frame of reference is built into the child by his parents, so in order to learn what makes a child go, there must be effective contact made with his parents."

He explained that teachers, counselors, liaison personnel, and all others who seek to learn more about the child's "frame of reference," will, through contacts with his parents, increase his chances of establishing effective communication with the child.

One of the areas in which dramatic changes have been taking place during the last two generations is that of community and school communications. *The most recent developments are the direct challenges and messages of dissent being issued to school systems by citizens and students. Here is a real situation with which the school and community may test their skills of communication,* Dr. Symons suggested.

Dr. Symons also suggested that if a school system could not handle problems arising from dissent through existing channels of communication, then it had better broaden the channels to ensure better opportunity for effective communication.

Tony Sierra, school board member, Calexico Unified School District, said that in every aspect of living—business, society, education—much importance is placed on matters involving human relations, and the preservation of good human relations depends on effective communication.

I think it is imperative, Mr. Sierra said, that school districts located in Spanish-speaking communities have on the staff a person who is able to communicate with these people in Spanish. *He added that relatively simple problems quickly become critical problems when effective communication does not exist.*

Mr. Sierra said that classroom teachers play an important role in good parent-school relations. He suggested that perhaps home visits should become a required part of a teacher's duties.

Assemblyman William Campbell (55th Assembly District) opened his presentation with the suggestion that education is *communication at its highest degree of refinement.*

The assemblyman reminded the group that modern communication has been accelerated by educational television, radio, and other audiovisual media, and he said that this acceleration often widens an already existing communication gap between parents and their offspring.

Assemblyman Campbell explained that this speeded-up communication presented a real challenge to educators. He went on to say that educators would need to work very hard to keep the software (curricular material) that the high-speed, highly technical hardware (the machines) uses as up-to-date as the machines are.

He said that persons involved in school-community communications must completely understand the importance of such an undertaking and must recognize the necessity of being prepared to handle the difficulties they will be required to overcome.

Arnold Rodriguez, Director of Community Relations for the Los Angeles Unified School District, pointed out that a major reason for poor communication between the school and the community is that *no effective lines of communication exist.* He explained that many education and community programs that are designed for Mexican-American children (and parents) are planned and produced without sufficient contact with Mexican-Americans. Programs of this nature would be much more successful if the Mexican-American citizen were involved inthe planning and execution of the programs.

Many communication problems arise, Mr. Rodriguez explained, because Mexican-Americans are not familiar with procedures. He said that many administrators are good technicians but very poor human-relations people.

He admonished school people to make effective moves to meet the needs of the Mexican-American community rather than stand by and let somebody else talk the Mexican-American community into making demands.

William J. J. Smith, Consultant in Adult Education with the California State Department of Education, said that in school and parent communication, the "transmitter" and the "receiver" should be on the same frequency, and that both should be turned on and in good working order before any communication is attempted. He pointed out that the form of the message should be unmistakably clear, and that when a different language might be an obstacle, perhaps the children, should be used to relay the messages of communication.

Mr. Smith suggested that more effective communication could be established if parent-teacher conferences could be conducted in the homes rather than in the schools.

John Erickson, community relations worker from the Sweetwater Union High School District in Chula Vista, distributed an information sheet which, he said, *outlined initial procedures for establishing effective school-community* relations. He said school personnel can be effective in the field; can get parents involved in discussing their problems; and can get parents to come to the school and communicate their problems to school personnel. He said that effective school-community relations depend on how well the district personnel get to the people and listen to what they have to say. *He admonished that the consequences of poor communication would be unbelievably costly. He said he was extremely hopeful that school* systems would take positive leadership roles in establishing strong lines of communication with the communities they serve.

EXHIBIT III

WHO IS THE MEXICAN AMERICAN AND HOW IS HE IDENTIFIED

This is truly a beautiful group of people. Five years ago, and certainly ten years ago, the likelihood of individuals like you coming to a meeting like this seemed so remote; yet here we are at a very timely point in our nation's development and in the continuing evolution of public education in the United States.

The fact that we can ask, "Who is the Mexican-American," is a sign of new strength and maturity in the United States. I view the question in a purely positive light. All of us are witnesses to the unrest and new demands of so-called minority groups; however, these demands are a blessing in disguise. They remind us that *there are still many unfulfilled promises and some preaching that we do not, as a people, fully practice. The demands of minority groups are consistent with American tradition.* Except for those minor elements that are clearly negative in attitude, *the demands of minority groups today show confidence in America—confidence that their demands can be met.*

I think that our generation is one of the most important in American history, for during our time the minority groups will save the majority from itself. Most of us here will understand what I mean when I say that the minority groups will save the majority. However, many Americans have forgotten that America is a land of immigrants; all of us are members of a minority group.

We have set the stage for a look at the Mexican-American minority group as it fits into American history. It may not surprise you that the Mexican-American confuses many people. He does not fit the pattern of the relatively successful immigrant because the theories about immigration, acculturation, and assimilation have been based on the transatlantic immigrations.

Many people are sincere when they say, "The Germans, the Irish, and the Jews have made it. What's the matter with the Mexican's?" This is a fair question that cries for answers. Amid the answers we may find a definition of the Mexican-American.

Untold thousands of Mexican-Americans have indeed "made it." However, most of these get lost in the American crowd. They become "invisible" due to monetary success, professional achievement, and intermarriage. Some change their names, while others do believe that blondes have more fun. Many of these people are no longer identified by others nor do they identify themselves as Mexican-Americans.

Most Mexican-Americans have not been assimilated to the extent that other groups have, and this is due to events and forces in their peculiar history.

Mexican-Americans are a heterogeneous group. Because other groups know so little about them, it is understandable that people talk about Mexican-Americans as if they were all alike.

It is not surprising that Mexican-Americans reflect some emotional psychological tensions. Tensions revolving around the question of identity have existed in Mexico itself for centuries; the issue of identity has not been resolved there either. (There is no monument, no plaza, no avenida in Mexico named after Hernan Cortez; and one talks about the *mestizo* or the Indian contribution as an ideology connected with the revolution.) Well, since Mexicans themselves are still in turmoil over *what is a Mexican*, it is not surprising that Mexican-Americans will differ in opinion and that others may be even more confused.

There is constant reinforcement of the Mexican culture in America today. No other minority group faces such pressures from the motherland as does the Mexican-American. I am sure you are aware that Mexican Spanish-speaking radio, newspapers, magazines, movies, and television abound in the United States. Personal contacts back and forth across the border number in the many millions every year. Therefore, even if you would want to, it is hard to escape association with, or shed, your *mexicanidad*.

The Mexican influence is not declining in importance; it is rising. At home, fewer people are defensive about Mexico. There is a new pride and confidence in things that are Mexican. Granted, Mexico has some serious problems, but generally the Mexican stock in art, music, architecture, politics, and economics is steadily rising throughout the world. In fact, the Mexican peso is now a little "harder" than the American dollar is in Zurich, Paris, and London. Throughout the world, Mexico commands respect.

Many Mexican-Americans have not wanted to become fully Americanized. Many Mexican-Americans have preferred to preserve such traits as personalism, close social and family groupings, old loyalties, and other virtues rather than to adopt many of those that prevail in our American society, such as industrialism, aggressiveness, financial success, and so forth. Of course, the fear of being rejected has caused many Mexican-Americans to refrain from moving into Anglo-American circles. In short, for several reasons this group has been more isolated generally than other American minority groups.

Cultural diversity should be treasured and enjoyed as long as it is within a framework of loyalty to American principles, democracy, and desire to improve our country. Whether we are concerned with the Mexican-American out of political necessity or enlightened self-interest, I hope that all of us would agree that the goal at hand is to strengthen America, rather than the preservation of the cultural traits of the Spanish, French, German, or other groups as an end in itself.

Many people have been "crying in the wilderness," so to speak, on behalf of the educational needs of the Mexican-American. Fortunately, our California Superintendent of Public Instruction has been asking good questions and has been acting out principles so as to broaden the base of *opportunity in public education. Superintendent Rafferty has done more in California to encourage the teaching about the role and contributions of minority groups, as well as understanding for* *cultural diversity, than all previous superintendents of public instruction in California. This cannot be denied (and I am a Democrat). He deserves that credit, and I trust that he will get it.*

Finally, in answer to the question: "Who is a Mexican-American?"—he is an American. Everything we do and say should reinforce this legal fact, and then we should proceed to make it a social reality. I believe that bilingualism or cultural pluralism can enhance being an American rather than detract from it.

I trust that all of us realize that the problems the Mexican-American faces constitute a challenge like those of other American minority groups, and, if these problems are given prompt, vigorous attention, they will become prospects for a stronger and better America.

REMARKS BY VINCENTE T. XIMENES, COMMISSIONER

I. THE SEARCH FOR IDENTITY

Carey McWilliams in his book "North From Mexico" said:

"Any phrase selected to characterize the Spanish-speaking will necessarily prove to be misleading, inaccurate, or possibly libelous. If there is a generally accepted usage it is to be found in the phrase 'Spanish-speaking,' but many people speak Spanish who cannot be identified with the Spanish-speaking group. Besides, the people who are generically Spanish-speaking are more Indian in racial origin, and perhaps in culture, than they are Spanish. 'Latin-American' is vague and euphemistic; 'Spanish-American' detracts from the importance of the Mexican and Indian heritage; while 'Mexican-American' implies a certain condescension." Add to the above, the Spanish-speaking Puerto Rican, Cuban, and South American and one can appreciate the difficulty of finding a simple handle to identify the ethnic group.

The word Chicano is being used by Mexican Americans of the Nation. The word is not new and in fact we used it to identify the people of the small rural villages many years ago. It is derived from the word Mexicano. I favor its usage.

II. THE SPANISH SURNAMED LIVE IN ALL PARTS OF NATION

The Spanish-speaking live in all parts of the United States. Puerto Ricans are concentrated in the East and Midwest, Cubans in Florida and the South, Mexican Americans in the Midwest, Southwest, and Northwest of the nation. Many small cities in the states of Nebraska, Kansas, Michigan, Iowa, Ohio and Illinois have 15 to 20 per cent Mexican American population.

III. OVER 10 MILLION SPANISH SURNAMED IN 1970 CENSUS

When a Western gunman was asked how many persons he had killed, he replied, "Thirty-seven not counting Mexicans" and since 1848 when the Treaty of Guadalupe Hidalgo was signed, no one "counted Mexicans."

The first Census survey of the Spanish Surnamed of the nation shows that in November 1969 there were 9.2 million in the nation. I predict that the 1970 Census will show at least 10.5 million Spanish Surnamed in the nation.

For a span of three centuries, from the 17th Century to the 19th Century, the Spanish-speaking peoples settled the vast Southwest. They tilled the soil, formed laws and governments, established commercial trade routes and, in general, developed the Southwest region. In the 19th Century the Nordic and Anglo-Saxon people conquered and/or bought the Southwest area of the United States. From 1848 until the present this nation turned its back and refused to hear our appeals for help against those who drove us from our lands, violated our civil rights, and instituted an educational system designed to produce uneducated Mexican American hand laborers. We were forgotten except by our local draft boards in time of war, by the employers in search of cheap labor, and by political bosses at election time. It has been said that in time of war we are Americans, during election we are Spanish Americans, and when we want a good job we are dirty Mexicans, Indians or Puerto Ricans.

IV. THE SIESTA IS OVER

Octavio Paz, Mexican philosopher, described us very well when he said: "I begin with the people for whom being a Mexican is a truly vital problem, a problem of life or death.

"When I went to live in the United States, I stayed for a while in Los Angeles, a city with around a million inhabitants of Mexican descent. At first sight the visitor is struck . . . by the city's vaguely Mexican atmosphere, an atmosphere impossible to convey in words. This impression of Mexico . . . floats in the air. I say floats because it neither mixes with nor melts into that other world, that North American world built on precision and efficiency. It floats but does not oppose; it sways, at the whim of the wind, sometimes as shapeless as a cloud and sometimes as direct and erect as a rocket. It hugs the ground, falls into pleats, expands, contracts, sleeps, or dreams: beauty in tatters."

The vaguely Spanish-speaking atmosphere floats in the United States as well as Los Angeles. But it also is "beauty in tatters." Our culture, heritage, customs, art, language, and architecture sacrificed at the alter of precision, profit, and the desire to have us all conform to institutions that inherently discriminate in employment, education, and participation. So the Mexican American "shouts or is mute, stabs or prays, lies down to sleep for a hundred years." The hundred years are over and the siesta has come to an end.

EXHIBIT IV

SOCIOLOGICAL OVERVIEW OF THE MEXICAN-AMERICAN IN RURAL AREAS AND IN URBAN AREAS

(By Julian Samora, Professor of Sociology, University of Notre Dame)

The "sleeping giant" that characterized the Mexican-American of the Southwest has awakened. Between yawns from his long sleep, he stretches his arms and legs, and those around him are perturbed.

This "giant" will never sleep again. He is no longer docile, fatalistic, pacifistic, long-suffering, and patient. He will no longer be called the invisible minority. He is among you. He is on the scene. You see him, you hear him, and you will hear him even more.

Now that we are finally aware of his presence, it behooves us to listen to his complaints; those of being neglected, exploited, and oppressed. In the overwhelming uprising of the poor in this society and in our day, his—the Mexican-American's—is but another voice.

In this decade, farm workers have been organized, labor and school strikes have been staged and some won, bilingual and bicultural education has begun, innumerable studies have been completed, boycotts have worked, a Southwest Council has been formed, a Mexican-American legal defense and education organization has been established, demonstrations have brought results, LA RAZA UNIDA is functioning, an interagency committee at the cabinet level is operating, many Mexican-Americans have been appointed to positions of import, *state and federal officials are seeking to create special programs for this minority, foundations* are welcoming projects which they might sponsor, and educators and students are organized.

Old leaders are losing their influence, and new leaders—young and impatient—are quickly taking their place. It is truly an exciting and frightful decade.

This decade has seen a fantastically large population movement in the Southwest. The movement has been two-pronged. One prong is represented by those who have moved from Colorado, New Mexico, and Arizona to Texas and California (mainly California); the other population movement within the states is the migration from the rural areas to the cities.

In 1950, 25 percent of the Mexican-Americans in California lived in rural areas; in 1960, 93 percent were urban residents. This shift in residence means that rural people—who generally are less well educated and have fewer skills—have been flocking to the *barrios* and *colonias* of the cities. Although the same thing is happening throughout the United States, *it is occurring more rapidly and in greater proportion among Mexican-Americans who for centuries have been predominantly residents of rural areas.*

Although the plight of the urban Mexican-American is a sad one characterized by poor housing, unemployment, low educational achievement, and inequality before the law, the position of the rural Mexican-American is even worse.

Let me state unequivocably that these are not minority group problems (i.e., Negro problems, Mexican problems); rather, they are American problems, yours and mine. *We—the society—have made them what they are. As educators, it is our task to use all means at our disposal to bring equality of educational opportunity within reach of all children.*

Sociological Overview of the Mexican-American in Urban Areas

(By Ralph Guzman, Assistant Professor of Government, California State College at Los Angeles)

In a classroom composed of Mexican-American students, one frequently finds in microcosm the negation of the mission of an educator; for *even the most sanguine of educators would find it difficult to sustain the proposition that Mexican-American children are prepared to operate effectively in either the larger American society or in the ghetto community. And any educator who reports that the majority of his students are satisfied or content with their lot in life confesses to a record of failure and deserves immediate dismissal.*

Contrary to the ideologies and contrary to the Mexicanologists, the Mexican border does not represent a protective shield from the realities of American life. The proximity of the Mexican-U.S. border affects in no way school dropouts in East Los Angeles—or in San Diego, for that matter; it does not improve street cleaning in Maravilla; it does not affect de facto segregation in our schools; it does not provide jobs for the unemployed; and it does not integrate housing. *The problems that Mexican-Americans face are American problems; they are rooted in America and will be resolved in the American political arena.* In this sense, Mexican-Americans have declared their independence from Mexico, and it is time for the American society to realize it.

The educational system for Mexican-Americans can best be understood within the context of a particular urban setting. Perhaps the most important distinction that can be drawn is the middle-classness of the American educational system. This, indeed, in probably the focal point of the inability of the majority of American schools to relate to the need and problems of the minority groups and the poor. It is perhaps a most common American triat to take a perfectly functional system and apply it endlessly in all circumstances. Thus, while the aim of education—the gearing for life—remains the same, unfortunately so do the techniques. This means that irrelevant systems frequently become functional to themselves rather than to the task at hand. In other words, the complexity of arrangements and institutions relevant to Glendale become meaningless in Boyle Heights. In the Mexican-American community, *the essential task of providing for an effective educational system—one that will enable the Mexican-American to compete successfully in a middle-class world—becomes lost in a welter of memoranda, lesson plans, policy statements and teacher-training institute.*

The urgency and the complexity of the task of educating minority groups is such that extravagant bonuses should be considered as a means of inducing excellent teachers to assist in accomplishing the task. Minority group neighborhoods need excellent teachers more than they need excellent administrators.

By the same token, *we must question archaic and shopworn notions of a profession that confuses itself with a medieval guild.* And the suspicion, lurking behind rejection of service in ghetto areas, does not pass unnoticed. In short, teachers themselves must have enough self-confidence in their own expertise and abilities to permit uncritical cooperation with nonprofessionals of the communities and parents being served.

It is not enough for a teacher to know intellectually, out of a book, that every social group contains natural leaders, undiscovered scientists, and undeveloped poets; if he does not apply it to students in his class—to real human beings—he is just as much a loss to society as if he never knew it at all.

Too often men lament the passing of the frontier in American society, the disapperance of vast challenges, and the lack of opportunity for exploration but *in the education of minority children, there are uncharted seas that Columbus never dreamed of and potential wealth to dwarf the Gran Quivida.*

THE BI-LINGUAL BI-CULTURAL CHILD AND SUMMARY OF TWO CONFERENCE TO IDENTIFY ACHIEVEMENT LEVEL

(By Elizabeth Ott, Director, Language-Bilingual Education Program, Southwest Educational Development Laboratory)

EXHIBIT V

UNDER, OVER, AND PRECISELY: A BALANCED BILINGUAL PROGRAM

Today we are in the midst of a social revolution. As educators—members of society's most significant institution for its preservation and maintenance—we do not have a choice of participation, but rather are automatically cast in active, vital roles that are central to the greater issue of directing the future of this country.

The determination of this direction calls for a broad and careful searching of knowledge in the fields of human experience, deep insight and concern for humanity, and the collective wisdom and intelligence of the total education community.

Many Americans continue to confront economic, political, and social restraints which have maintained over a century of residence in this land. Immigrants from other countries fled poverty, opression, and despair; they came with hope, but they often found hostility and discrimination. They also found opportunity. Though they had to dig ditches, work in sweatshops, and resort to other types of stoop labor, they maintained their dignity and earned the right to make demands on society, thereby moving up and out.

The waves of Spanish-speaking immigrants from Mexico arrived during the late part of the nineteenth century and the beginning of the twentieth century and became the major labor force in the agrarian economic structure that was developing in the Southwest. *Their educational needs were ignored, and their principal value was seen as the number of hours spent in planting, tending and harvesting crops, often with not even subsistence level earnings.*

Although in our country there is wide agreement, support, and acceptance of the fundamental value of equal educational opportunity, when it comes to areas of specific application, there is considerable disagreement over its meaning. There are evolutionary changes in the interpretation of the concept which give a perspective to bases for disagreement today, but these changes also indicate some interpretation of the concept of equal educational opportunity for the future. *I propose that for the Mexican-American, equal opportunity of education implies and demands consideration of his native language and culture.*

A primary factor in the educational deprivation of the Mexican-American is his general lack of facility with either English or Spanish as far as entry into the formalized educational program of the school is concerned. If the child *did* have proficiency in Spanish, it would be of no service to him in the school systems of this country. *The fact that he exists in a bilingual-bicultural context can no longer be ignored when educational programs to meet the unique capabilities and needs of the Mexican-American are being designed.*

For the person whose native language is Spanish, improved language competence in both Spanish and English is desirable for the individaul's success in school, job advancement, and psychological health.

The bilingual-bicultural child may well start life with the enormous advantage of having a more open, receptive mind about himself and other people and may be among those most likely to work out for us a new, nonethnocentric mode of social intercourse which could be of universal significance.

Obvious weaknesses of past educational programs and practices were (1) overemphasis of English language skills; (2) under-estimating the power of the Spanish culture and the beauty of its language; and (3) the lack of precisely the right balance in an educational program which will fully develop the bilingual child and harmonize the two cultures in which he exists.

EXHIBIT VI

THE CHALLENGE—WITHOUT PICKETS, DEMONSTRATIONS, WALKOUTS OR WALKINS

(By Eugene Gonzales, Associate Superintendent of Public Instruction; and Chief, Division of Instruction)

I am pleased to have this opportunity to greet you, the participants in this, the second annual statewide conference to be devoted to the issue of educating the Mexican-American child and adult. *We are here at the request of the Superintendent of Public Instruction, attending a conference sponsored by the State Department of Education.* Since the first Nuevas Vistas conference was held, the State Department of Education has cosponsored at least 12 workshops designed to explore the needs of the Mexican-American child, and they were all well attended. Our purpose here is to discuss the ways in which we can effect the improvement of instruction of Spanish-speaking students in our public schools. Our task, which has so often been considered an impossible hurdle, can now be considered a worthy *challenge*. It is your challenge and mine: To develop new techniques using tested materials *to eliminate the poor showing of our system of education which has been so insensitive to the needs of the Spanish-surnamed* citizen. I am referring to the American of Mexican descent—the sleeping giant who is now flexing his muscles *and gaining attention.*

Colleagues, consider these questions: Do we have the understanding and support of the policymakers in education? Would we have the present situation if school personnel were not continually lulled by the myth of the subtly condescending stereotype of the Mexican-American?

Why is change so difficult? Why have *we not developed adequate approaches to teaching the basic skills of communication?* Why have we not utilized the obvious attributes of the Spanish-surnámed: his native tongue and his cultural values? Are we aware of the cultural contributions he is making to the Southwest's way of life?

I believe that, with the knowhow, perception, and experienced gained in the 12 workshops of the past year, *el intercambio de ideas of the next 30 hours will unable us to* return to our respective communities and schools much wiser and with greater understanding of the questions posed at this conference and of the implications of their answers.

We have teachers and administrators, we have concerned parents; *we have spokesmen of reputable organizations committed to upgrading educational programs for the Spanish-surnamed;* and tomorrow there will be more of them. You and I must be a part of that group, and together *we must remove the barricades erected by far too many years of maintaining the status quo.*

Can anyone doubt that this is the time for change? *This is the moment for creative innovation*, and this is surely the day to accept the Mexican-American as a bona fide citizen and a genuine asset to our nation.

I place before this assembly a *charge* . . . a *challenge:* that in the next 30 hours, every ounce of energy we possess, individually and collectively, be directed to that which *will result in the development of the best instructional program yet devised for Spanish-speaking Americans.*

This Second Annual Nuevas Vistas Conference was called by Max Rafferty to determine what kinds of instructional programs should be provided for California's Mexican-Americans. If we truly believe in Juan and Juanita, then we must modify our common, spraygun curriculum and focus our strengths and *knowledge on the bilengual, bicultural, and, until now, bypassed American of Mexican descent!*

We entitled the First Nevas Vista Conference, *!Si, se puede!* and we are doing it!

I know that the many parents and young adults here, today, are interested in assisting us in finding the answers to the many complex and perplexing educational challenges facing the community.

I firmly believe that we can meet the challenge. *And this challenge can be met without pickets, demonstrations, walkouts, or walk-ins!* We can repudiate the *senseless* accusations of fringe groups that attack the bilingual-instruction approach as communistically inspired *or* as meaningless tokenism. We will *win* the battle to educate Americans of Mexican descent if we *resist* being mired down by our efforts to defend methods and philosophy.

My friends, in accordance with the theme of this Second Annual Nuevas Vistas Conference, adelante!

MEXICAN-AMERICAN EDUCATION RESEARCH PROJECT

(By John Plakos, Director, Mexican-American Education Research Project
California State Department of Education)

The educational needs of Spanish-speaking children have been discussed and debated among educators and other interested persons for several years in an effort to understand how thees pupils might be best served in our schools. These discussions have come about because of *the disproportionately high dropout rate of the Mexican-American pupils in our public schools.*

Our research shows that there are 600,000 pupils of Mexican descent in our schools—the largest minority group in attendance—and that 50 percent of these pupils do not complete the eighth grade, and 73 percent do not complete high school.

In an attempt to determine some of the reasons for this dropout rate, surveys were made by the Research Project and some very important information was obtained. For example, it was found that *86 percent of the 1,000 school districts that serve pupils of Mexican descent do not have special programs for the education of Spanish-speaking pupils;* and that 57 percent of the teachers working with these students have not had any special training in working with non-English-speaking children. It was found that *problems causing the greatest difficulty for Spanish-speaking children are: a limited vocabulary, reading disabilities, lack of English fluency, low aspiration level (which is debatable), low interest in school, speech difficulties, and poor word-attack skills.*

With this information in hand, bilingual instructional programs were put into operation in experimental classes in different areas of the state in an effort to determine the degree of success the Spanish-speaking children might have in special programs designed around the strengths and needs of these children.

It has been determined that children whose native language is Spanish and whose cultural backgrounds are different from the traditional school culture upon which the curriculum is based may be expected to experience difficulty in meeting the demands of the school world. Among the possible causes of failure are these: (1) a lack of experiences out of which concepts may grow; (2) an inadequate command of the English language—the language of the instructional program; (3) a lowered self-confidence resulting from repeated frustration and failure; and (4) an unrealistic curriculum which imposes reading and writing requirements in English *before* skills in listening comprehension and in speaking fluency have been mastered.

In view of these factors, which are generally descriptive of the school problems of the Spanish-speaking child from a low-income family, programs of instruction have been designed that attempt to deal with these failure-producing conditions and to assess the effectiveness of such efforts to improve the educational opportunities of Spanish-speaking children.

As the Mexican-American Education Research Project continues its evaluation of the experimental classes, all useful information will be disseminated to all interested educators and community groups.

THE EDUCATION OF THE MEXICAN-AMERICAN

A Summary of the Proceedings of
the Lake Arrowhead and Anaheim Conferences

This document was produced
with Elementary and Secondary
Education Act, Title V, funds,
1968.

The Mexican-American Education Problem

The "universe" under discussion at the Mexican-American Education Research Project's Lake Arrowhead and Anaheim conferences was defined to include all Mexican-American students -- the immigrant child, the children of migrant workers, and the various generations of students living in homogeneous communities composed of persons of Mexican descent.

The major problem was identified as the "low educational attainment of the Mexican-American," which underlies the large numbers of economically impoverished Mexican-American families, the serious social problems of that segment of the community, and the insufficient supply of effective Mexican-American leaders. The Mexican-American education problem must be resolved if there is to be improvement in the intellectual, cultural, and socioeconomic position of the whole society, for it is California's largest and most complex educational problem.

It is essential that the causes of, and possible solutions to, the major educational difficulties facing Mexican-Americans be correctly identified and that these factors be understood by the education community. Teachers, administrators, and school board members must be made aware of the need for changes in the educational programs to ensure Mexican-American students an opportunity to experience success in school and in life.

The isolation of Mexican-American children and youth from many Anglo teachers, adults, and peers is due in large measure to insufficient understanding of the differences in cultural attitudes and psychological conditions of the Mexican-American. An awareness of these differences is of central importance in the development of a quality education program.

Mexican-American educators are not promoting a "special interest group," but rather are attempting to ensure that boards of education et al become truly cognizant of the problems involved in teaching the Mexican-American and give this problem its due amount of attention.

Effective guidance of Mexican-American students is largely lacking, resulting in isolation and ineffective academic performance by the students and a severe loss to society as a whole. Thus, drastic changes in curriculum, methodology, pupil personnel practices, teacher training, and community relations programs are necessary to meet the particular needs of this unique group. It is incumbent upon our educational system to make sure that all human resources are fully utilized.

POINTS OF VIEW ON THE PLACE OF MEXICAN-AMERICAN CULTURE IN CALIFORNIA

One of the first statements made at the Lake Arrowhead Conference pointed to the ambivalence that the Mexican-American educators have about keeping these children "Mexican." One point of view held that the Mexican-American must fit into the American society -- not that of Mexico. "Our Mexican-American students," it was pointed out, "are not being reared in a truly 'Mexican' culture, and, for many of them, much of what is called 'heritage' is boring stuff. Therefore, our first aim should be total assimilation without reference to Mexican cultural traits, traditions, or values."

A second viewpoint took note of the quality of life in the Mexican-American barrio. It pointed to the poor education the students of the barrio receive, which, along with other negative aspects, forces those who can afford to move to do so in order to secure a better life for their children. If the schools of the barrio were able to provide the children with a mastery of subjects such as English and mathematics -- tools necessary for our complex commercial and technological setting -- then this would encourage many parents to stay and help improve the general quality of life in the barrio. This view holds that there is value in having the school make the Mexican cultural heritage known to its pupils as a form of educational enrichment, but that the priority of the instructional program must be the development of economically salable skills.

Another segment of the group argued persuasively that reducing the Mexican-American education problem to one of economics is an oversimplification. "Man does not live by bread alone." He needs a spiritual or ideological diet as well as occupational skills.

Others called for a broader view of Mexican life in the Southwest. "The Southwest may be viewed," they pointed out, "as an extension of Mexican and Hispanic culture." The nations south of the Rio Grande have already had an impact on our civilization, and, with improved communications and transportation, increased commercial intercourse will mean increased cultural contact between the United States and Latin America. Thousands of Mexican-Americans could play an important part in bringing these two cultures together harmoniously if they were trained for the task. Mexican-American students begin life with an important asset: their bilingual-bicultural knowledge. As such they have two souls and are capable of intimately knowing people with two distinct world views. To dissipate these resources or to fail to cultivate them would be a gross error and waste on the part of the United States. Unguided acculturation of today's Mexican-American in California threatens to waste his potential value to the nation's future. The school must therefore take "Mexican" cultural traits and values into account when planning educational programs for these students. The school should capitalize on the existing assets of the Mexican-American rather than attempt to force these youth into a planned homogeneous culture in which they may not have the opportunity to develop the ability to cope with ever-changing problems.

The Mexican-American of early California had no doubts about his worth and the value of his language. It was understood by many Mexicans, after the war between Mexico and the United States, that Spanish would be recognized as one of the languages of the Southwest and that Hispanic cultural customs would be retained. There is even perhaps some legal evidence that supports this view. However, the value system of the Anglo culture came to regard Spanish as inferior and sought the imposition of Anglo values to wash away the stains of foreign elements in California's social fabric. Naturally, this was to cause confusion, doubt, and anxiety in the Mexican-American's mind. The effects of the psychological tremors, coupled with other telling factors, have no doubt helped to undermine the Mexican-American student's ability to perform effectively in the classroom. Today, perhaps more important than anything else, these things must be understood by "Juanito's teacher," especially if he is not acquainted with the history of the Southwest and its Hispanic influence. The important tactical question is this: "How can the teacher help these students adapt successfully to a different culture without destroying their bilingual ability and without making them feel ashamed of the word 'Mexican'?" In too many of our schools, this feeling of shame or uncertainty about his heritage leads the Mexican-American child to discriminate against his Mexican peer who is a recent arrival to California and the United States.

THE STATUS OF CURRENT EDUCATIONAL PROGRAMS FOR MEXICAN-AMERICAN STUDENTS

During the conference proceedings, it became increasingly apparent that the instructional programs in those schools serving Mexican-American communities and other proposals for tackling the major problem were designed to integrate or fully assimilate the Mexican-American into the Anglo culture without sufficient consideration for preserving his bilingual and bicultural assets.

Compensatory education programs were among the first to be singled out for criticism. The criticisms were based upon observations made in schools where Mexican-Americans predominate. One major criticism was that new compensatory education programs have been appended to the regular instructional program without considering their integral relationship to the total curriculum. "Headstart" and "English-as-a-second-language" programs were cited as innovations that have not notably altered the curriculum. Questions such as the following were asked: "What happens to the child who receives special attention in something like 'Headstart' when he gets into the regular school program?" "What provision does the regular instructional program make for building on these special experiences or for taking into account the child's particular bilingual-bicultural characteristics?" Since no special provisions were noted by members of the group who had observed compensatory education programs, it was recommended that greater attention be given to this aspect of the educational program.

Some of the Mexican-American educators working solely in the area of compensatory education stated that they had experienced repeated frustration in attempting to bring about what they felt were needed changes in the instructional programs for Mexican-American students. The State Department of

Education's Office of Compensatory Education, they noted, also had difficulty in convincing school districts to modify instructional programs for Mexican-American students. Another limiting factor cited was the uncertainty of funding for compensatory education programs. Finally, there was a feeling that an unequal emphasis was being given to compensatory education programs for other ethnic groups over those for the Mexican-Americans, especially in large urban centers.

After due deliberation, the following statements on compensatory education were set forth:

- Compensatory education is not meeting the needs for which it was intended because of the following factors:

  Compensatory education threatens to divert school districts from their responsibilities for culturally different youth. In some cases there is an undesirable separation of responsibility for compensatory education in the regular district program and for special instructional programs for the disadvantaged. Some school districts are reluctant to bring about the integration of students in these special programs and students in the regular instructional programs.

  Many compensatory education programs are defective due to:

  1. Hasty organization and lack of direction
  2. Use of unqualified personnel to administer compensatory education programs
  3. Lack of attention to creative education rather than "more of the same"

- Compensatory education should consider the following factors:

  Mexican-Americans, as the largest California minority, have unique instructional problems and require more assistance in the form of compensatory education programs than other groups.

  Programs should not lead to segregation in the guise of "separation in order to provide maximum concentration of effort."

  Follow-up studies of recipients of compensatory education should be conducted to determine the effectiveness of existing compensatory education programs in relation to the special needs of the Mexican-American child and to provide better understanding of the unique learning problems of this group of children.

  It should not be assumed that students who need compensatory education are inferior.

- Successful instructional practices and educational research findings from compensatory education programs should be incorporated into regular school programs.

- The State Department of Education's Office of Compensatory Education should be given sufficient authority to develop creative compensatory education programs.

CURRICULUM MODIFICATION FOR MEXICAN-AMERICAN STUDENTS

It was reported that many of the difficulties in modifying educational programs in Mexican-American communities have been created because of the attitudes that still exist in some districts. Some teachers are reluctant to discard familiar techniques because modification or retooling for new ones entails an extra effort they are not yet willing to exert. Concern was expressed that some school boards might be reacting negatively to what they feel is an overemphasis on Mexican-American children. There is a reluctance to recognize the fact that the needs of Mexican-American students often are different from those of Anglo students and that it is necessary to provide for these differences in the instructional program. This situation may have come about because of a lack of effective communication between the Mexican-American community and the school. This was reported to be especially true in large districts where establishing communication generally takes longer. In light of the slow progress being made in enlightening the Anglo community about the Mexican-American educational problem, the conferees called for both immediate and long-range plans to change Anglo misconceptions and negative attitudes toward the problem.

IMPORTANT CONSIDERATIONS FOR MEXICAN-AMERICAN EDUCATION PROGRAMS

The major objective in the development of Mexican-American education programs must be the creation of quality education that provides opportunities for each Mexican-American student to develop his abilities and talent to the fullest extent possible. The curriculum of this educational program must develop the specific knowledge, skills, and attitudes through which the individual may attain socioeconomic security and at the same time make him capable of contributing to the improvement of his society. To achieve this broad general goal, the group called upon the schools to recognize the bicultural and bilingual factors that operate in the Mexican-American's education and to modify the instructional program accordingly. The following points need to be given serious consideration:

- Mexican-Americans are a very diverse group. Teachers must understand this diversity.

  Mexican-Americans differ because of their geographical origin (or that of their parents). The student born and partially reared in Mexico is different from one who originated in Texas, California, or Arizona. The fact that he or his parents may have a rural orientation rather than an urban one will result in important differences.

Mexican-American students differ in their fluency with the English and Spanish languages. At one extreme is the student who speaks no English, and at the other extreme is the student who speaks no Spanish. Between these two extremes are found those who are adept at handling both languages and those who speak a nonstandard form of English and Spanish.

Mexican-Americans differ in their personal identification with Mexican culture. Some are knowledgeable about Mexico and exhibit traits, values, and customs of Hispanic origin; some have never had much contact with Mexican cultural influences or have parents who prefer to abandon or neglect the preservation of their Mexican cultural heritage.

Mexican-American students differ in socioeconomic background. Varying degrees of poverty and affluence, differences in the environment of the home itself, the vocational or professional level of the parents, and opportunities for the student to engage in enrichening experiences outside of school are all reflected in the Mexican-American student.

Mexican-American students differ in their psycho-cultural orientation. The way in which the Mexican-American child and his family perceive Anglo values and the way in which the Anglo community and his Anglo peers look upon Mexican-American values, his physical appearance, and his cultural background may lead to psychological conflict, and in turn may give rise to anxieties or feelings of hostility.

- Pride in the Mexican-American's heritage should be stimulated because it offers promise as a motivating force toward school achievement. The Mexican-American's cultural heritage also offers a great opportunity for achieving a richer society. Community resources such as tradition, folklore, and the history of Mexico and its contributions to American society should be used to promote pride in heritage. This will enable the student to see himself as one who has a responsible role to fill in the school, the home, and the community.

- There is a need to capitalize on and develop further the Mexican-American student's talent in using the Spanish language. Communication is the most important factor in understanding the many groups that make up our nation. Bilingualism is especially important in communication between people from different cultures. Thus, bilingualism is important for everyone -- not only for the Mexican-American student who must learn English along with his Spanish but also for his Anglo counterpart who should learn Spanish with his English. The Mexican-American student should be given recognition in the classroom for his knowledge of Spanish. Many Mexican-American students do not exhibit their knowledge of Spanish through class participation because of the fear of making mistakes while using English. If they are given recognition for assisting in the teaching of Spanish, the entire class can benefit from bilingual instruction.

SUGGESTIONS FOR DIFFERENT LEVELS OF INSTRUCTION

Appropriate modification of the curriculum for students of Mexican descent was considered to be of central importance. The conferees considered the following to be minimal features of a good educational program for Mexican-American students:

- At the preschool level

  Emphasis on sequential language development activities for non-English speaking children

  Specific educational experiences that prepare children for success in school

  Individual attention through lower pupil-teacher ratios

  Diagnosis of health impediments to learning and attention to their correction

- At the elementary school level

  Maximum utilization of the knowledge and skills children acquire in preschool instructional programs

  Sound counseling of all students, including early (before the third grade) identification of talented youth, implemented by effective teaching practices

  Provision for experiential activities in hearing, speaking, reading, writing, and conceptualizing skills that make successful participation in all academic, aesthetic, and creative aspects of education possible

  Presentation of subject matter in the Spanish language, in accordance with ascertained needs, while children are receiving regular English instruction to ensure normal progress until adequate competency in English is achieved

  Insistence on the mastery of computational and language arts skills necessary for subsequent entry into higher education and complex technological, commercial, or professional occupations

Better articulation of English-as-a-second-language programs between elementary and secondary schools

Use of bilingual paraprofessional workers in the schools to assist teachers with Mexican-American students

Employment of a school-community relations coordinator to develop better liaison between the school and the Mexican-American community

- At the secondary school level

  Provision for special English courses using modern linguistic techniques to break the language barrier that confronts many Mexican-American students

  Provision for individual attention in all subject matter areas where language communication is a serious problem

  The use of a tutorial system will greatly aid those Mexican-American high school students who find themselves handicapped by a lack of facility with English. Assistance of this type could also be extended into extracurricular activities so that language problems will not operate as a bar to participation in this segment of school life.

  Increased attention to keeping the Mexican-American student in school and ensuring his satisfactory progress

  Every effort must be made to assist in solving problems caused by a lack of self-confidence, feelings of inferiority, a lack of stimulation to obtain an education, lack of proper counseling, inability to accumulate the necessary credits for graduation, student finances, and so forth.

  Recognition of the serious need for trained leadership among Mexican-Americans in the academic as well as in the cocurricular aspects of the school program

  Capable students must be identified earlier, and every effort must be made to direct these students into productive and fruitful academic programs. Preconceived notions that Mexican-Americans are automatically directed into vocational or secretarial majors must be resisted.

  Effective vocational programs for those who wish to use acquired skills immediately upon graduation

  Equal educational opportunities demand quality programs for terminal students as well as college-bound students.

Development of problem-solving skills in all students

- Because of the rapid change and increasing complexity of our American culture, the Mexican-American needs to learn to utilize his creative abilities in conjunction with his school-accumulated knowledge. He must learn to identify meaningful issues, determine the consequences of different judgments, discern the most effective solutions, and translate these into appropriate action.

A program of mature civic information that will develop insight into social and civic problems to enable students to participate as loyal and thoughtful citizens

- At the higher education level

While the number of Mexican-Americans with college training is growing, it is still pitifully small; in proportion to the general population increase, the Mexican-American population is even losing ground. Entry into the middle socioeconomic class and into community leadership positions is increasingly dependent upon suitable training and orientation in our colleges and universities. Bicultural groups generally become more fully "American" when they have representatives within the decision-making structure. Mexican-Americans have relatively few such representatives, and higher education is viewed as an important first step in producing trained leaders.

The problems of the Mexican-American in higher education are generally due to the rapid socioeconomic changes taking place and an adequate approach to the resultant conditions on the part of the various segments of higher education. For, while many colleges have a "melting-pot" admissions policy that provides for ethnic and racial quotas so that these groups are realistically represented on their campuses, too many colleges and universities fail to recognize the differences in students and, consequently, they do not structure the curriculum to meet the needs of the various ethnic groups. Even the junior colleges, which are supposed to provide terminal education as well as preparation for senior colleges, are leaning toward a liberal arts image that excludes many Mexican-American students. The junior colleges offer the best opportunity for Mexican-Americans to enter higher education, and it was recommended that the State Board of Education formulate administrative guidelines for more judicious use, location, and financing of junior college facilities in order to better serve the local community.

Another problem involved in getting more Mexican-Americans into college is that, for a number of reasons, they are not applying for available scholarships, loans, and grants. This is due, in part, to the failure of schools and colleges to furnish the Mexican-American community with adequate information about the available opportunities for financing higher education. Moreover, financial assistance to worthy needy students should be greatly broadened.

Specifically, the following were recommended for special attention:

Dramatize the plight of the Mexican-American in higher education.

Encourage Mexican-American students to take advantage of existing financial-aid programs, and actively explore means of expanding financial assistance to students from the Mexican-American commu

Press for formal commitment on the part of colleges and universities to institute programs that will meet the special educational needs of disadvantaged communities. Higher education personnel must actively recruit Mexican-American students and provide for realistic admission policies and conditions of successful study for them.

Formulate programs of compensatory education in higher education which will capitalize on the latent potential of human resources which are at present being choked off or only marginally tapped.

- At the adult education level

The Mexican-American student's success in school cannot be divorced from the educational background of his parents. Because of the lower educational attainment of many parents, the large number of families that speak only Spanish, the need for upgrading skills, and the serious health, social, economic, and legal problems that beset many Mexican-American communities, there is an obvious need for expanded adult education. What is not obvious to Mexican-American parents, however, is that their lack of knowledge and orientation to the American social and economic institutions hinders their children's learning. Unaware of school procedures and of the mundane problems their children face, many parents cannot adequately assist their children with schoolwork, counsel them outside the school, acquaint them with possible vocational goals for the future, encourage them to raise their aspirations, or suggest specific means of attaining higher goals. It is not a matter of "not caring," but rather a question of "not knowing how" to provide assistance to the young people.

There is need for both a far-reaching approach to home-school relationships and a program of basic adult education which will enable parents to cope more effectively with their own personal and family problems, to participate in the improvement of their neighborhood and the extended community, and to acquire the necessary knowledge and insights that can be used to reinforce the school's work with their children.

RELATED AREAS OF CONCERN

Those in attendance at the two conferences discussed the factors that they considered to be of vital importance to an effective instructional program.

It was their judgment that without serious attention to the following areas, the quality programs so urgently needed and desired could not be realized.

Counseling and Guidance

It was agreed that the counseling services available to Mexican-American students were far too limited to be effective. In one of the state's largest high schools with a heavy concentration of Mexican-American students, it was calculated that, on the average, each student was eligible for one hour and 45 minutes of counseling per year. Obviously, if one student required more than the average amount, another student would receive less. The group recommended that counseling programs in all schools be strengthened with such features as the following:

- Counseling should be available, with early involvement of the parents, from preschool to the university. The guidance program should have as its prime objectives the development of self-awareness, self-esteem, and self-confidence in these students of Mexican descent.
- A counselor's understanding of the student's socioeconomic status, degree of assimilation, verbal fluency (in English and Spanish), his ties with the Mexican culture, and so forth, will lessen the stereotyping of the Mexican-American and lead to better guidance practices.
- Valid and reliable instruments that take into account the Mexican-American student's culture and language should be used when gathering information for guidance purposes. Adequate instruments to determine the Mexican-American student's verbal skills, school achievement, self-image, and potential are not now being used extensively enough.
- Greater emphasis should be placed on identification of potential scholarship candidates. These students should be given proper guidance and courses of study that will lead to successful work in higher education.
- Counselors should be aware that too many Mexican-American students with potential in other areas have been guided into terminal vocational courses that have no value in today's labor market. Strong preapprenticeship programs, coordinated with industry or business, should be encouraged.
- Adequate counseling time should be made available for all students, and, since Mexican-American students constitute a highly disproportionate percent of dropouts, special intensive counseling time should be allowed for these potential dropouts.
- In communities where Spanish is a common language, there should be at least one Spanish-speaking counselor in the school to communicate effectively with the parents.

Staff and Staff-training Programs

It is readily apparent that the cultural differences that exist between the professional staff and the students (and their parents) will have important implications for the success of the entire system. It is vitally important that school personnel, especially the large number of those who come to California from school districts where the Mexican-American culture is unknown, be provided with an opportunity for gaining an understanding of this culture, since the educational performance of the Mexican-American student is directly related to his cultural background. Interpretation of the Mexican-American student's behavior and motivations may be conditioned by the staff member's own cultural background.

In light of these facts, it was urged that:

- Training programs for teachers who will work with Mexican-American students should include an opportunity for understanding the student's culture and the culture of the society in which the student is expected to function. Such understanding may reveal some of the student's handicaps in grasping the lesson, and the teacher can make the necessary adjustments in the instructional program so that the student can grasp the lesson with a minimum of cultural conflict.
- Increased use should be made of paraprofessional assistance in classrooms with Mexican-American students. The use of indigenous Spanish-speaking personnel as teacher-aides should enhance teacher effectiveness; thus their employment is strongly urged.
- School personnel should be so selected as to assure that staff members serving Mexican-American students will be sympathetic and sincerely committed to working effectively with these students.
- Not only teachers but also building principals, central office supervisors, and all other administrators need some orientation to the unique problems of Mexican-American students. Provisions for briefing them on these problems should be made.
- Mexican-American leaders in the community should be used as consultants, visiting lecturers, and sources of information to the school. They can also serve as models and inspiration for the students.

School-community Relations

In many Mexican-American homes, there is no real awareness of what is going on in the school; consequently, parental conception of the school's role may be unrealistic. This lack of awareness results from a communications gap between the school and the community -- a gap which is often the cause of misunderstanding and resentment toward the school. The absence of complaints by Mexican-American parents or community organizations is often regarded as evidence of harmonious school-community relations, when, in fact, it may be an indication of frustration and rejection of the schools by parents who are unable to communicate with the school. This may be especially true in communities where built-in barriers of language and cultural differences (as well as social and economic differences) exist. For this reason, the group strongly recommended that:

- Someone from the school should be assigned the responsibility for liaison between the school and the community. The size of the district may require the efforts of more than one individual.
- Those charged with school-community relations in Mexican-American neighborhoods should be knowledgeable about the Mexican-American culture and the Spanish language if they are to carry out their assignments effectively.
- Neighborhood school advisory councils should be created to establish a sound and meaningful dialogue with the school. Effective utilization of existing community groups is another means to the same end.

It is evident that further research and study must be conducted in this vital and complex area of education; however, educators in attendance at the Lake Arrowhead and Anaheim conferences urged that serious consideration be given to the earliest possible implementation of the recommendations embodied in this report.

De7-108 5-68 1M

THE LAW - THE FEDERAL CONSTITUTION EXTENDS TO THOSE WHO SPEAK OTHER LANGUAGES AS WELL AS THOSE WHO SPEAK ENGLISH

Exhibit VII

(262 U. S. 390)

MEYER v. STATE OF NEBRASKA.

(Argued Feb. 23, 1923. Decided June 4, 1923.)

No. 325.

1. Constitutional law 🔑255—Matters embraced within "liberty," protected by Constitution, specified.

Under Const. U. S. Amend. 14, providing that no state shall deprive any person of liberty without due process of law, "liberty" denotes, not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Liberty.]

2. Constitutional law 🔑255—Liberty may not be interfered with by arbitrary legislative action.

The liberty protected by Const. U. S. Amend. 14, may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

3. Constitutional law 🔑70(3)—Legislative determination as to proper exercise of police power subject to supervision.

Determination by the Legislature of what constitutes a proper exercise of the police power is not final or conclusive, but subject to supervision by the courts.

4. Constitutional law 🔑255—Schools and school districts 🔑164—Statute relative to teaching of foreign languages held unconstitutional, as taking liberty without due process of law.

Act Neb. April 9, 1919 (Laws 1919, c. 249), prohibiting the teaching of any subject in any language other than the English language in any school, or the teaching of languages other than the English language below the eighth grade, is unconstitutional, as arbitrary and without reasonable relation to any end within the competency of the state, and as depriving teachers and parents of liberty without due process of law, in violation of Const. U. S. Amend. 14.

5. Constitutional law 🔑278(4)—Statute relative to teaching of foreign languages held not sustainable as a health measure.

Act Neb. April 9, 1919 (Laws 1919, c. 249), prohibiting the teaching of any subject in any language other than the English language, or the teaching of languages other than the English language to pupils who have not passed the eighth grade, cannot be sustained as designed to protect the health of children, by limiting their mental activities, as it leaves complete freedom as to matters other than modern languages.

Mr. Justice Holmes and Mr. Justice Sutherland, dissenting.

In Error to the Supreme Court of the State of Nebraska.

Robert T. Meyer was convicted of an offense, and his conviction was affirmed by the Supreme Court of Nebraska (107 Neb. 657, 187 N. W. 100), and he brings error. Reversed and remanded.

*391

*Messrs. A. F. Mullen, of Omaha, Neb., C. E. Sandall, of York, Neb., and I. L. Albert, of Columbus, Neb., for plaintiff in error.

*393

*Messrs. Mason Wheeler, of Lincoln, Neb., and O. S. Spillman, of Pierce, Neb., for the State of Nebraska.

---

[11] Every corporation is allowed to deduct from gross income all operating expenses—that is, the disbursements incident to the life and the conduct of its business. But the individual is not permitted to deduct from gross income any part of his living expenses (except so far as they may be covered by the exemption). Railroads and other public corporations are allowed to deduct, as an operating expense, the cost of tools and small equipment. Individuals and other corporations are not. Ordinary corporations and individuals are allowed to deduct rentals and interest paid. Compare the limited deduction for interest paid under the Federal Corporation Tax Act. Anderson v. Forty-Two Broadway Co., 239 U. S. 69, 36 Sup. Ct. 17, 60 L. Ed. 152; New York, New Haven & Hartford R. R. Co. v. United States (C. C. A.) 269 Fed. 907.

*396

*Mr. Justice McREYNOLDS delivered the opinion of the Court.

Plaintiff in error was tried and convicted in the district court for Hamilton county, Nebraska, under an information which charged that on May 25, 1920, while an instructor in Zion Parochial School he unlawfully taught the subject of reading in the German language to Raymond Parpart, a

*397

child of 10 years, who had not attained *and successfully passed the eighth grade. The information is based upon "An act relating to the teaching of foreign languages in the state of Nebraska," approved April 9, 1919 (Laws 1919, c. 249), which follows:

> "Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language than the English language.
>
> "Sec. 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.
>
> "Sec. 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five dollars ($25), nor more than one hundred dollars ($100), or be confined in the county jail for any period not exceeding thirty days for each offense.
>
> "Sec. 4. Whereas, an emergency exists, this act shall be in force from and after its passage and approval."

The Supreme Court of the state affirmed the judgment of conviction. 107 Neb. 657, 187 N. W. 100. It declared the offense charged and established was "the direct and intentional teaching of the German language as a distinct subject to a child who had not passed the eighth grade," in the parochial school maintained by Zion Evangelical Lutheran Congregation, a collection of Biblical stories being used therefor. And it held that the statute forbidding this did not conflict with the Fourteenth Amendment, but was a valid exercise of the police power. The following excerpts from the opinion sufficiently indicate the reasons advanced to support the conclusion:

> "The salutary purpose of the statute is clear. The Legislature had seen the baneful effects of
>
> *398
>
> permitting for*eigners, who had taken residence in this country, to rear and educate their children in the language of their native land. The result of that condition was found to be inimical to our own safety. To allow the children of foreigners, who had emigrated here, to be taught from early childhood the language of the country of their parents was to rear them with that language as their mother tongue. It was to educate them so that they must always think in that language, and, as a consequence, naturally inculcate in them the ideas and sentiments foreign to the best interests of this country. The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that, until they had grown into that language and until it had become a part of them, they should not in the schools be taught any other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state. The enactment of such a statute comes reasonably within the police power of the state. Pohl v. State, 102 Ohio St. 474, 132 N. E. 20; State v. Bartels, 191 Iowa, 1060, 181 N. W. 503.
>
> "It is suggested that the law is an unwarranted restriction, in that it applies to all citizens of the state and arbitrarily interferes with the rights of citizens who are not of foreign ancestry, and prevents them, without reason, from having their children taught foreign languages in school. That argument is not well taken, for it assumes that every citizen finds himself restrained by the statute. The hours which a child is able to devote to study in the confinement of school are limited. It must have ample time for exercise or play. Its daily capacity for learning is comparatively small. A selection of subjects for its education, therefore, from among the many that might be taught, is obviously necessary. The Legislature no doubt had in mind the practical operation of the law. The law affects few cit-
>
> *399
>
> izens, except those of foreign line*age. Other citizens, in their selection of studies, except perhaps in rare instances, have never deemed it of importance to teach their children foreign languages before such children have reached the eighth grade. In the legislative mind, the salutary effect of the statute no doubt outweighed the restriction upon the citizens generally, which, it appears, was a restriction of no real consequence."

The problem for our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment:

> "No state * * * shall deprive any person of life, liberty or property without due process of law."

[1-3] While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Slaughter-House Cases, 16 Wall. 36, 21 L. Ed. 394; Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 4 Sup. Ct. 652, 28 L. Ed. 585; Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064,

30 L. Ed. 220; Minnesota v. Barber, 136 U. S. 313, 10 Sup. Ct. 862, 34 L. Ed. 455; Allgeyer v. Louisiana, 165 U. S. 578, 17 Sup. Ct. 427, 41 L. Ed. 832; Lochner v. New York, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133; Twining v. New Jersey 211 U. S. 78, 29 Sup. Ct. 14, 53 L. Ed. 97; Chicago, B. & Q. R. R. v. McGuire, 219 U. S. 549, 31 Sup. Ct. 259, 55 L. Ed. 328; Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. 7, 60 L. Ed. 131, L. R. A. 1916D, 545, Ann. Cas. 1917B, 283; Adams v. Tanner, 224 U. S. 590, 37 Sup. Ct. 662, 61 L. Ed. 1336, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U. S. 357, 38 Sup. Ct. 337, 62 L. Ed. 772, Ann. Cas. 1918E, 593; Truax v. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124, 66 L. Ed. 254; Adkins v. Children's Hospital (April 9, 1923), 261 U. S. 525, 43 Sup. Ct. 394, 67 L. Ed. —; Wyeth v. Cambridge Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, 23 L. R. A. (N. S.) 147. The established doctrine *400 is that this liberty may not be inter*fered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. Lawton v. Steele, 152 U. S. 133, 137, 14 Sup. Ct. 499, 38 L. Ed. 385.

[4] The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares:

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws.

Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment.

The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of twelve. The Supreme Court of the state has held that "the so-called ancient or dead languages" are not "within the spirit or the *401 purpose of *the act." Nebraska District of Evangelical Lutheran Synod, etc., v. McKelvie et al. (Neb.) 187 N. W. 927 (April 19, 1922). Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian, and every other alien speech are within the ban. Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.

It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals, and "that the English language should be and become the mother tongue of all children reared in this state." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.

For the welfare of his Ideal Commonwealth, Plato suggested a law which should provide:

> "That the wives of our guardians are to be common, and their children are to be common, *402 and no parent is to know his own child, *nor any child his parent. * * * The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be."

In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius their ideas touching the relation between individual and state were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any Legislature could impose such restrictions upon the people of a state without doing violence to both letter and spirit of the Constitution.

The desire of the Legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every character of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquility has been shown.

The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the Supreme Court. *403 Adams v. *Tanner, 244 U. S. 594, 37 Sup. Ct. 662, 61 L. Ed. 1336, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state.

[5] As the statute undertakes to interfere only with teaching which involves a modern language, leaving complete freedom as to other matters, there seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities. It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

Mr. Justice Holmes and Mr. Justice Sutherland, dissent.

(262 U. S. 404)

BARTELS v. STATE OF IOWA.

No. 134.

BOHNING v. STATE OF OHIO.

No. 181.

POHL v. SAME.

No. 182.

NEBRASKA DISTRICT OF EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, AND OTHER STATES et al. v. McKELVIE et al.

No. 440.

(No. 134, Argued and Submitted Nov. 28, 1922. Nos. 181, 182, Argued Oct. 10, 1922. No. 440, Argued Feb. 23, 1923. Decided June 4, 1923.)

Constitutional law ⟹255—Schools and school districts ⟹164—Statutes relative to teaching of foreign languages held unconstitutional.

Act Iowa April 10, 1919 (Laws 1919, c. 198), Act Ohio June 5, 1919 (108 Ohio Laws, p. 614), and Act Neb. April 14, 1921 (Laws 1921, c. 61), relative to the teaching of foreign languages, or the use of foreign languages as a medium of instruction, are unconstitutional, as violating Const. U. S. Amend. 14, providing that no state shall deprive any person of liberty without due process of law.

Mr. Justice HOLMES and Mr. Justice SUTHERLAND dissenting in part.

In Error to the Supreme Court of the State of Iowa.

In Error to the Supreme Court of the State of Ohio.

In Error to the Supreme Court of the State of Nebraska.

Criminal prosecutions by the State of Iowa against August Bartels, and by the State of Ohio against H. H. Bohning and against Emil Pohl, and suit for injunction by the Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and Other States, and others, against Samuel R. McKelvie and others. Judgments of conviction in the first three cases were affirmed (191 Iowa, 1060, 181 N. W. 508; 102 Ohio St. 474, 132 N. E. 20), and a judgment for plaintiffs in the fourth case was reversed (187 N. W. 927), and defendants in the first three cases and plaintiffs in the fourth case bring error. Judgments in the first three cases reversed, judgment in the fourth case reversed as to one defendant and case dismissed as to the others.

No. 134:

Messrs. Frank E. Farwell and Charles E. Pickett, both of Waterloo, Iowa, and I. L. Albert, of Columbus, Neb., for plaintiff in error Bartels.

Mr. Bruce J. Flick, of Des Moines, Iowa, for the State of Iowa.

Nos. 181, 182:

*406

*Messrs. Timothy S. Hogan and Frank Davis, Jr., both of Columbus, Ohio, for plaintiffs in error Bohning and Pohl.

Mr. E. J. Thobaben, of Cleveland, Ohio, for the State of Ohio.

No. 440:

*408

*Messrs. A. F. Mullen, of Omaha, Neb., and C. E. Sandall, of York, Neb., for plaintiffs in error Nebraska Dist. of Evangelical Lutheran Synod and others.

Messrs. Mason Wheeler, of Lincoln, Neb., and O. S. Spillman, of Pierce, Neb., for defendants in error McKelvie and others.

*409

*Mr. Justice McREYNOLDS delivered the opinion of the Court.

The several judgments entered in these causes by the Supreme Courts of Iowa, Ohio, and Nebraska, respectively, must be reversed upon authority of Meyer v. Nebraska, 262 U. S. 390, 43 Sup. Ct. 625, 67 L. Ed. —, decided to-day.

No. 134. Plaintiff in error was convicted of teaching pupils in a parochial school below the eighth grade to read German, contrary to "An act requiring the use of the English language as the medium of instruction in all secular subjects in all schools within the state of Iowa," approved April 10, 1919 (Acts 1919, c. 198).[1] He used English for teaching the common school branches, but taught young pupils to read German. The Supreme Court of the state held:

> "The manifest design of this language statute is to supplement the compulsory education law by requiring that the branches enumerated to be taught shall be taught in the English language, and in no other. The evident purpose is that no other language shall be taught in any school, public or private, during the tender years of youth, that is, below the eighth grade." 191 Iowa, 1060, 181 N. W. 508.

Nos. 181 and 182. Bohning and Pohl, of St. Johns Evangelical Congregational School, Garfield Heights, Cuyahoga county, Ohio,

*410

were severally convicted (102 *Ohio St. 474, 132 N. E. 20) of violating "An act to supplement section 7762 of the General Code * * * and to repeal section 7729, concerning elementary, private and parochial schools and providing that instruction shall be in the English language" (108 Ohio Laws, 614), approved June 5, 1919,[2] which prohibits the teaching of German to pupils below the eighth grade.

No. 440. An injunction is sought against the Governor and Attorney General of the state and the attorney for Platte county to prevent enforcement of "An act to declare the English language the official language of this state, and to require all official proceedings, records and publications to be in such language and all school branches to be taught in said language in public, private, denominational and parochial schools," etc., approved

*411

April 14, *1921 (Laws 1921, c. 61).[3] This statute is subject to the same objections as those offered to the act of 1919 and sustained in Meyer v. Nebraska, supra. The purpose of the later enactment as stated by counsel for the state, is "to place beyond the possibility for legal evasion a prohibition against the teaching in schools of foreign languages to children who have not passed the eighth grade." The Supreme Court considered the merits of the cause, upheld the statute, and refused an injunction. (Neb.) 187 N. W. 927 (April 19, 1922).

---

[1] Section 1. That the medium of instruction in all secular subjects taught in all of the schools, public and private, within the state of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited, provided, however, that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular school course in any such school, in all courses above the eighth grade.

Sec. 2. That any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

[2] Section 7762—1. That all subjects and branches taught in the elementary schools of the state of Ohio below the eighth grade shall be taught in the English language only. The board of education, trustees, directors and such other officers as may be in control, shall cause to be taught in the elementary schools all the branches named in section 7648 of the General Code. Provided, that the German language shall not be taught below the eighth grade in any of the elementary schools of this state.

Sec. 7762—2. All private and parochial schools and all schools maintained in connection with benevolent and correctional institutions within this state which instruct pupils who have not completed a course of study equivalent to that prescribed for the first seven grades of the elementary schools of this state, shall be taught in the English language only, and the person or persons, trustees or officers in control shall cause to be taught in them such branches of learning as prescribed in section 7648 of the General Code or such as the advancement of pupils may require, and the persons or officers in control direct; provided that the German language shall not be taught below the eighth grade in any such schools within this state.

Sec. 7762—3. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and each separate day in which such act shall be violated shall constitute a separate offense.

[3] Section 1. The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools.

Sec. 2. No person, individually or as a teacher, shall, in any private, denominational, or parochial or public school, teach any subject to any person in any language other than the English language.

Sec. 3. Languages other than the English language may be taught as languages only, after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county or the city superintendent of the city in which the child resides: Provided, that the provisions of this act shall not apply to schools held on Sunday or on some other day of the week which those having the care and custody of the pupils attending same conscientiously observe as the Sabbath, where the object and purpose of such schools is the giving of religious instruction, but shall apply to all other schools and to schools held at all other times: Provided that nothing in this act shall prohibit any person from teaching his own children in his own home any foreign language.

* * * * * * * * *

Sec. 7. Chapter 249, of the Session Laws of Nebraska for 1919, entitled, "An act relating to the teaching of foreign languages in the state of Nebraska," is hereby repealed.

McKelvie and Davis, formerly Governor and Attorney General, no longer occupy those offices. The cause is dismissed as to them. Otto F. Walter is now the county attorney and the judgment below as to him must be reversed.

Reversed.

*412

*Mr. Justice HOLMES. We all agree, I take it, that it is desirable that all the citizens of the United States should speak a common tongue, and therefore that the end aimed at by the statute is a lawful and proper one. The only question is whether the means adopted deprive teachers of the liberty secured to them by the Fourteenth Amendment. It is with hesitation and unwillingness that I differ from my brethren with regard to a law like this but I cannot bring my mind to believe that in some circumstances, and circumstances existing it is said in Nebraska, the statute might not be regarded as a reasonable or even necessary method of reaching the desired result. The part of the act with which we are concerned deals with the teaching of young children. Youth is the time when familiarity with a language is established and if there are sections in the State where a child would hear only Polish or French or German spoken at home I am not prepared to say that it is unreasonable to provide that in his early years he shall hear and speak only English at school. But if it is reasonable it is not an undue restriction of the liberty either of teacher or scholar. No one would doubt that a teacher might be forbidden to teach many things, and the only criterion of his liberty under the Constitution that I can think of is "whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat." Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 204, 33 Sup. Ct. 44, 47 (57 L. Ed. 184); Hebe Co. v. Shaw, 248 U. S. 297, 303, 39 Sup. Ct. 125, 63 L. Ed. 255; Jacob Ruppert v. Caffey, 251 U. S. 264, 40 Sup. Ct. 141, 64 L. Ed. 260. I think I appreciate the objection to the law but it appears to me to present a question upon which men reasonably might differ and therefore I am unable to say that the Constitution of the United States prevents the experiment being tried.

*413

*I agree with the Court as to the special proviso against the German language contained in the statute dealt with in Bohning v. Ohio.

Mr. Justice SUTHERLAND concurs in this opinion.

Senator PELL. Thank you very much, Mr. Ruiz.
Our next witness is Dr. Cardenas.

STATEMENT OF DR. JOSE A. CARDENAS, SUPERINTENDENT, EDGEWOOD INDEPENDENT SCHOOLS DISTRICT, SAN ANTONIO, TEX.

Mr. CARDENAS. Gentlemen, I have spent 20 years in professional service in the education of Mexican Americans. I have viewed problems of the education of the Mexican American from various perspectives, as a classroom teacher and administrator and supervisor, as a college professor, in research and development activity.

I would like to communicate to you some of the problems in the education of the Mexican American and the implications of Senate bill 3883 for the resolution of some of these problems. In the first place, I would like to agree with the previous speakers, that the Mexican American is an isolated ethnic group in many school systems. And I have worked in their school systems. I see the Mexican American as a segregated, isolated ethnic group.

In some cases, because they live in predominant Mexican American barrios, and the school district contains large numbers of Mexican Americans; in other cases as in the case of the school district where I work, it is a gerrymandered school district where the lines that divide the school district from others follow no political or geographic barrier and are arbitrarily drawn, to include a predominant quantity of Mexican Americans.

In some cases, I have seen educational isolation of the Mexican American child because of intentional segregation and the establishment in various States in this country of the so-called "Mexican" schools. It is a minority group and it is isolated as a minority group. Ironically, even in cases where the Mexican American makes up as much as 85 percent to 90 percent of the population of the community, it is still treated as a minority group. It is excluded from the educational enterprise. Dropout figures indicate the extent of the nonparticipation of the student. There are no figures, though, that indicate the extent of not-participation of the parents in the educational enterprise.

Mexican Americans very little participate as teachers and professional personnel in education. It is rather unique to find a Mexican American that participates in an administrative or supervisory capacity in a school system which may be predominantly Mexican American.

We also see the isolation because of the migrancy of the Mexican American where he is treated very much like a stepchild in the school district. Characteristics of the Mexican American in the public schools are underachievement, retention and dropout. This, in itself, tends to isolate. They are isolated through tracking systems that are utilized in schools. They are separated from the Anglo counterparts who go through college preparatory programs, where the Mexican Americans are put in vocational programs.

They are isolated because of the lack of Mexican-American orientation in instructional materials and methodology employed in the school, and also because of inadequate staffing of personnel which prepare professional programs, who work with the Mexican-American child.

I can summarize this by saying most teachers do not even recognize the Mexican American as a unique individual and a culturally and language differing individual. Those that do, invariably do nothing about it, and when some attempt to do something about it they invariably do the wrong thing.

I am superintendent of the Edgewood School District in San Antonio. It is a very small school district geographically, made up of 16 square miles, but it contains 25,000 children. It is classified as large in the State of Texas. It is included as one of the largest 15 of the 1,200 school districts in the State of Texas. It is located within the city limits of San Antonio, on the western part. It is predominantly Mexican American. It is the poorest school district in this area. It is poorest in terms of the income of the parents, it is poorest in terms of the tax base, it is the poorest in terms of per pupil expenditures. It has the highest percentage of noncertified teachers. During the past school year, 52 percent of the teachers in that school district did not meet the minimum requirements for certification in the State of Texas.

It has the lowest number of library books per pupil. In fact, it is a segregated school district in that 93 percent of the students are Mexican American, 3½ percent are black, and 3½ percent are Anglo.

There are many problems that are associated with this, and I think these problems may be classified as social problems, educational problems, and, of course, the fundamental financial problems. Because of the poverty in the school district and the fact that it does not have a tax base which includes the downtown areas and the shopping centers and the industry of San Antonio, it has the lowest tax base in the city of San Antonio.

In fact, I did some statistics which I would like to present for the record. But, just to summarize, in 1969–70 it has a total tax income for the maintenance and operation of the schools from local sources of $205,946. Out of this, $138,600 has to be allocated to be for the minimum foundation program, which supports the educational enterprise in the State of Texas, leaving a total of $66,250 annually for all locally unassigned resources. This is less than $3 per pupil and in spite of the criticisms about the lack of local resources, it is one of the most heavily taxed school districts in Bexar County, Tex. It has a higher tax rate, it has a higher percentage of valuation, and recent efforts to raise these makes this one of the most taxed school districts and yet with the lowest per-pupil resources.

It is very easy in terms of computing the expenditures to see that in a school district this size more than a million dollars a year are needed in local resources in order to take care of the educational enterprise and the items that are not covered by the minimum foundation program. So that the school district operates with a deficit, which in past years has been made up by Public Law 74, impacted Federal funds, which may be curtailed or eliminated in the near future.

With respect to some of the problems related to some of the Federal programs that operate in this district, the administrative costs are never taken care of in the Federal programs. In title I the school district receives 5.2 percent of the total expenditure for administrative cost, and in the migrant program there are no moneys made available for administrative costs; i.e., personnel, accounting, administrative. Under title VII, which is the Bilingual Act, again no money is made available for this purpose.

Assuming that 15 percent is usually allocated for administrative costs, just operation of these three Federal programs: title I, migrant, and bilingual, costs the school district an estimated $105,000 a year which must be supported through local effort. I have already prepared and submitted for your perusal evidence indicating that the school district's total unassigned funds are only $66,250.

As far as numerical inadequacies in some of the Federal programs. we find that it is just not meeting the need.

Title I, for instance, is allocated in the State of Texas on the basis of the 1960 census. In this school district, we receive an allocation which takes care of and must be used on only 2,927 children, even though our annual survey indicates an excess of 12,000 economically disadvantaged children. So that the allocation which the school district receives under title I takes care of less than one-fourth of the children that we can substantiate as being economically deprived, and does not include the educationally deprived.

The same thing is true of title VII, the bilingual program. We operate it in 16 first grades under a grant from the U.S. Office of Education. Yet there are 85 first grades in this district that need bilingual education programs. So that the vast majority of the children are not receiving these services.

Participation in the HUD program, such as Model Cities, is reserved to 10 schools in the Model Cities area. Yet I have 25 schools that have a need for identical services.

Perhaps the most ironic and bitterest stuation that exists is the lack of matching funds available for the acquisition of State and Federal funds.

Title II of the Elementary and Secondary Education Act does not serve the Edgewood school district, because it requires and maintenance of local effort, and it is impossible for us to come up with the necessary resources. So that we have a situation in which the school district that needs the funds the most cannot participate because of lack of local funds.

We do not participate in NDEA titles III and V which provide counseling services and materials, again because of lack of local resources. We seldom participate in cafeterial non-food assistance, because of lack of matching funds. We don't participate in most of the services of the regional services centers that were recently established, because it costs the school district $24,000, or a dollar per pupil in average daily attendance for participation.

Recently the State of Texas, and in combination with Federal programs, has made available television programs. Again, it would cost the school district $36,000 to participate in TV Station KLRN programs which are educational programs. Again we do not have these types of resources for participation. It is ironic that the bilingual act has funded a program for the station and allocated $200,000 for the development and transmission of bilingual TV programs. All of the school districts in south Texas that have the biggest number of Mexican Americans will not be able to view these, because it costs a $1.50 per child in average daily attendance to participate and be a recipient of this service.

I think that in general summarizes the problem. I will say that whereas the Federal program aims at helping school districts that have pockets of poverty, a school district like Edgewood that has a large amount of poverty which is almost synonymous with being Mexican-Americans, is not being assisted through either the Federal or the State programs.

Now, I am very interested in Senate bill 3883 because I think it can respond to many of the problems. I think it can provide financial assistance for the operation of the schools, to offset the effect of the impact of minority members in the school district and the low tax base which is created. I think Senate bill 3883 can provide special grants for the development of new programs, new instructional methodology, and provide special services to the disadvantaged which are not adequately provided for in other legislation.

Specifically, any financial assistance which can be provided can offset the effects of the impactedness. I think that it can provide not only for the basic operation of the educational program which is not being met in the school district, it can also provide matching funds for the acquisition of other services. It can promote and facilitate the integration of the Mexican-American children with the Anglo-American groups. Funds may even be used to offset the lack of local resources for salary supplements in order for the school district to be able to attract competent and experienced teachers into the school district.

In terms of program activities, I feel that it is necessary, if we are ever going to reach these children, that the characteristics of the instructional program be compatible with the characteristics of the learner. I make the statement that an instructional program which is developed for white, Anglo Saxon, English-speaking, middle-class-oriented children is not adequate for nonwhite, non-English speaking, non-middle-class-oriented minority group members in our schools.

I am a strong advocate of early educational programs for 2-, 3-, 4- and 5-year-old children, in order to offset the deprivations of poverty.

I promote bilingual programs which are needed in order for the child to be able to study in his language and learn in the language which is compatible with the language which he speaks in the home. This type of legislation can do much for the development of intercultural education programs as well as intracultural education programs, which permits the Mexican American to retain his identity through cultural programs and also for the Mexican-American and other groups to be able to understand and appreciate other cultures.

We have a tremendous need for dropout prevention programs. Throughout the United States the dropout rate for Mexican Americans in the various communities ranges anywhere from 50 to 90 percent, and very little is being done to offset this. The moneys made available under title VIII of the Elementary and Secondary Education Act are not anywhere near adequate to meet this problem. Not only that, but frequently the dropout prevention programs are inadequate in that they are dysfunctional and do not respond to the problem.

Most of the dropout programs I have seen are based on the assumption that the Mexican American does not value education, which is erroneous. Lack of financial resources and lack of achievement in schools, I feel, are the biggest contributors to Mexican-American dropouts. Just motivating children when we do not give them either the resources or the instructional programs with which they can succeed may be aggravating an existing situation.

I think it is necessary that the Mexican American—should be brought into the educational enterprise and community involvement programs in order for the Mexican-American parents "to understand and support the role of the school," but something I have never seen, is reciprocity, that is, the school is supposed to understand and support the role of the Mexican-American parent who is culturally unique.

I have talked about the need for development of new methodology. I will summarize and say if the Mexican American is to be taught in an integrated type of situation, it is necessary that the innovations and the delivery system for these innovations be developed and implemented. It is necessary that we develop methods of testing for the assessment of potential achievement of the Mexican American. These measures are not in existence in our country today.

There is a certain need for services, for the Mexican American, including counseling, phychological, health, legal, medical, dental, and others. Last, but not least, I think there is a need for further research into the problems of the Mexican American and the development of strategies for meeting these problems.

I thank you for the opportunity of presenting this. I will submit a prepared text for your consideration. I feel that S. 3883 can provide some services and resources which may lead to an equal educational opportunity for the Mexican Americans that are not provided in other legislation.

(The prepared statement of Dr. Cardenas follows:)

EDGEWOOD **INDEPENDENT SCHOOL DISTRICT**

5358
WEST
COMMERCE
STREET
•
SAN
ANTONIO,
TEXAS
78237

CLEMENTE SAENZ
PRESIDENT
DAVID ALVARADO
VICE-PRESIDENT
ARTURO D. RODRIGUEZ
SECRETARY
ALEX BERNAL
CHRIS ESCAMILLA
M. P. RODRIGUEZ
LUPE VELA

JOSE A. CARDENAS
TESTIMONY BEFORE
THE EDUCATION SUBCOMMITTEE
OF THE SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
AND THE SELECT COMMITTEE ON
EQUAL EDUCATIONAL OPPORTUNITY
JULY 10, 1970

DR. JOSE A. CARDENAS, SUPERINTENDENT OF SCHOOLS

SENATOR PELL, SENATOR MONDALE, HONORABLE MEMBERS OF THE COMMITTEE:

Thank you for this opportunity to present testimony before your Committee and which will allow you to focus today on the needs and aspirations of the six million Mexican Americans in this country. It is my sincere hope that this will be among the first of many such opportunities for members of the Mexican American community to contribute to comprehensive legislation by participating in Congressional deliberations at the Committee level.

Isolation is a reality in the educational encounter of the Mexican American child. He may be ethnically isolated because he lives in an urban barrio and attends gerrymandered school districts. His isolation may be the result of his living in a rural town which maintains a "Mexican" school. He may live in a South Texas town where he belongs to an 85% MINORITY of the population, but where neither his parents nor anyone like them can have any input into the policy-making or implementing function of the school. If he is a migrant, he is isolated by a system that either is unresponsive to his late entry and early departure or responsive in the wrong way. He may be one of the few who attend a racially and ethnically balanced school and all may seem well, except that he can't see himself or anyone like him in the textbooks and teachers don't ever talk about families that have nine or ten children and a grandfather and an aunt living in the home. Often his language and cultural difference is equated with slowness or dumbness and he's put into the slow class or isolated in the slow group within the class. I.Q. tests which were never made with him in mind prove that he really is slow. Out of a sense of kindness, he is led into vocational education and isolated there, often with unmarketable skills, for the rest of his life. Finally, his family is isolated from the school and the school is able to take solace in "a family that doesn't care" as an excuse for its failure to the child. Other testimony presented to you today substantiates the tragic effects of this ethnic isolation. My plea is that you will respond as fairly to these incidents of ethnic isolation as you respond to the more obvious incidents of racial isolation.

The Edgewood Independent School District in Bexar County, Texas is part of, if not party to, one system of ethnic isolation which works much to the detriment of the Mexican American child. Edgewood is one of sixteen school districts in Bexar County, which includes the metropolitan area of San Antonio, Texas. It is also the poorest, the one with the highest percentage (52%) of teachers who do not meet the minimum requirements for certification prescribed by the

State of Texas, the one with the lowest number of library books per child, the most inadequate physical facilities and the greatest percentage of Mexican American children. If the objective of the educational system in the state of Texas were to focus the most inadequate of resources on the children with the greatest need, Edgewood would stand as a monument to its success.

Edgewood is indisputably a segregated school district. Of its approximately 23,000 student population, 93 percent are of Spanish surnames, 3.5 percent are Negroes, and 3.5 percent are Anglo, or non-Spanish surname white. More than 53.2 percent are from low income families. A 1968 survey by school officials revealed that one half of one percent of the parents of its children are in professional occupations, one half of one percent are in managerial occupations, ten percent are skilled laborers and eighty percent are in unskilled occupations. Thus a great majority of Edgewood children are locked not only in ethnic isolation, but into the culture of poverty as well.

There is little likelihood that the pattern of ethnic isolation existing in Edgewood will be reversed. Because it is impoverished, Edgewood, and districts like it, perpetuates existing patterns of racial and ethnic isolation. It is not likely that the Anglo population which enjoys greater social and economic mobility than the Mexican American will move into the Edgewood School District. A quick glance at real estate advertisements in the local newspapers reveals that developers are building homes in "preferred" school districts and offering these preferred school districts as a selling point for their developments. While I can be optimistic about improving the educational program in Edgewood, I cannot deceive myself into hoping that Edgewood would be sold as a "preferred" school district anytime in the next ten years.

Consolidation with other school districts is not likely. Not only would such consolidation destroy the school districts' immunity from HEW efforts to promote school district integration, but it would place the burden of providing an instructional program on another school district which does not wish to incur the additional expense of taking on a "poor" district's problems.

Military installations in Bexar County also perpetuate patterns of ethnic isolation. Dependents of military personnel at Kelly Air Force Base, which is situated in the Edgewood School District, do not attend Edgewood schools because these have been deemed inadequate by military officials. They are bussed instead to San Antonio Independent School District and other school districts and with them goes almost $1,000,000 in federal assistance monies. I cannot help but be impressed by the irony of the situation that while the nation and this Honorable Committee debate the adequacy of bussing as a means of eliminating racial and ethnic isolation, a federal installation indirectly subsidizes bussing which results in ethnic isolation. To imply that military officials intended to segregate in establishing this practice is not my purpose at this time.

Model Cities and other federal housing-oriented programs promise to add to the ethnic isolation prevalent in Bexar County. Model Cities' plans call for an additional 16,000 federally subsidized housing units in the Edgewood District within the next five years. Because persons eligible for such housing are largely Mexican American and because housing units planned for the Edgewood District are intended to provide housing for individuals relocated because of major non-housing construction projects in other areas of the Model Neighborhood Area, it is not unreasonable to project an increase of a minimum 32,000 children in the Edgewood District over the next five years. Almost all of these children would be minority group children; at least 90% Mexican American. Conversely, during the past few years, attempts to build federally subsidized housing in other predominantly Anglo parts of the community have been successfully defeated. As a result, the Edgewood section of town is rapidly approaching 100 percent racial and ethnic minority group members. This resulting situation produces unique and far-reaching problems in the education of the children.

Inadequate Resources

The system of ethnic and racial isolation prevalent in Bexar County compounds the problem of ethnic isolation with such meager financial resources that the resultant instructional program is cripplingly inadequate. In San Antonio, as in most of the Southwest, the terms "Mexican American" and "poverty" are almost synonymous. Two years ago, the Governor's Committee on Public School Education told the story of the inequalities in educational opportunity when it compared two school districts in Bexar County, a core city school district and a suburban school district. (See Appendix A). The suburban district had 91 extra professional personnel beyond the

Minimum Foundation Program which is Texas' system for financing public school education in the state; the core district had 45 less than those prescribed by the Minimum Foundation Program. The suburban district had 5% of its teachers on emergency permits; the core district had 52% on emergency permits. The suburban district received $221 in state aid per average daily attendance, the core district received $217 in state aid per average daily attendance. The suburban district had $29,650 in full property value per ADA; the core district had $5,875. The deprived district in this comparison was Edgewood.

The residents of the Edgewood District are committed to the education of their young. The tax structure in the Edgewood School District reflects the community's willingness to tax itself. This willingness has little impact on the reality of the inadequate tax base in the district. A comparison of tax base per pupil of the various school districts in the county illustrates:

SCHOOL DISTRICT	TAX BASE PER PUPIL
Alamo Heights	49,214
East Central	31,692
Edgewood	5,945
Harlandale	11,543
Northeast	30,613
Northside	23,724
San Antonio	22,103
Somerset	29,070
South San Antonio	11,981
Southside	17,341
Southwest	21,344

The Edgewood tax rate of $1.50 per $100 valuation compares favorably with that of other school districts in the area. (See Appendix B). The average for the county is $1.48 per $100 valuation. The assessment ratio is one of the highest in the area. Still local tax revenue last year amounted to a meager $205,946. This sum is depleted by a local fund assignment of $139,696. This local fund assignment is the amount the Edgewood School District must pay the state to support the Minimum Foundation Program. The resultant $66,250 in local uncommitted resources was intended to cover local costs for the maintenance and operation of twenty-five schools. This is approximately $2,650 per school for utilities, insurance, upkeep, institutional supplies, and equipment to name just a few of the bare essentials. (See Appendix A).

Expenditures from local funds are so high when compared with local resources that "deficit spending" seems a ludicrously mild term for describing the resulting situation. The following are some selected expenditures essential to the operation of the Edgewood School District. These figures are taken from the Edgewood Independent School District budget for 1969-70 and are auditable for their essential validity. I should like to emphasize however that these are selected items; they are not by any means a complete accounting.

Selected Expenditures

A. Administration	
1. Tax Office	$ 22,608.00
2. Business Office	24,396.00
Payroll (computer)	4,000.00
B. Salaries	
1. Local salary increments above MFP (including administrative salary increments)	183,743.00

C. Instructional	
1. Instructional supplies	34,509.00
D. Co-curricular activities	
1. Band	8,000.00
2. Choral	4,000.00
3. Athletic	36,000.00
E. Equipment	
1. Vocational Education	10,000.00
2. Other	31,663.00
F. Food Service	10,234.00
G. Insurance	
1. Fire and extended coverage	16,674.00
2. Vehicle liability	1,718.00
3. General liability	4,205.00
H. Maintenance payroll	485,290.00
I. ROTC Instructors	24,000.00
J. Utilities	168,282.00
K. Local teacher aides	12,000.00
	$1,081,322.00

In addition to the unassigned local funds of $66,250.00, the Edgewood School District can utilize to cover the expenses I have just itemized, the state allocation per CTU which amounts to $447,600. This results in $513,850 to cover expenses totalling $1,081,322. The deficit is dependent upon the emergence of critical needs and the amount of risk which the administration wishes to incur. The conclusion is obvious: If the Edgewood School District had to rely solely on the efficiency of the Minimum Foundation Program and unassigned local funds, it would be bankrupt before half of the school year was over. The School District is able to operate just short of bankruptcy for two reasons:

1. Because of the availability of P.L. 874 funds which were critically threatened this year and which may be eliminated in the very near future, and,
2. Because we have learned to do without.

Our dependency on P.L. 874 funds is crippling. We perpetuate practices which we will be unable to carry on if these funds are eliminated. For the Edgewood youngster school may reopen with no pep squad, no band, no R.O.T.C., no football, basketball or baseball. Edgewood students may soon be giving up locally subsidized activities such as choir, drama, debate, and year books. Some would argue that there is already too much emphasis on co-curricular activities. I would not disagree entirely, but I challenge the critics and this Committee to help me explain to a sixteen-year old boy that he shouldn't mind that he can't play football because the low tax base in the district, the local fund assignment, and the Minimum Foundation Program are incompatible with his dream. Yet I have to live with the reality that the athletic programs cost the District approximately $36,000 per year or more than half of the district's local unassigned resources.

Edgewood's entire existence is based on doing without. Often elimination of activities is costly in terms of student achievement. Almost always it is costly in terms of the children's right to enriching experiences. The effect of the denial of these experiences, so characteristic of the American way of life, due to a lack of funds in this district is conducive to the development of the negative self-concept so characteristic of the disadvantaged and the minority groups.

CATEGORICAL AID

The Edgewood School District received some $4.5 million in federal aid this year, all categorical with the exception of P.L. 874. The sum was unusually high this year because of the Model Cities program funded for San Antonio. Model Cities philosophy, however, insists that all programs initiated with Model Cities funds eventually phase into other kinds of funding, presumably local or state. Other Federal programs such as Title I, Title I-Migrant, Title VII, Career Opportunities are an additional burden on District resources. These programs make demands of administrative personnel in the accounting, personnel, and executive offices, yet federal guidelines governing the programs make no allowances for budgeting indirect costs and many explicitly limit allocations for indirect costs. The result is obvious-enough: categorical federal grants will eventually cause a school district to go bankrupt. Title I allocations, for example, allow 5.2 percent for administrative costs to a school district. The Title VII allocation was 0 percent. The implications of these sums are more readily understood when compared to indirect cost allowances awarded to other institutions. Most universities concerned with the drain of financial resources for the support of institutes and research projects have enacted policies preventing the acceptance of such projects unless a minimum of 20% is allocated for indirect costs. In Edgewood local resources are expected to provide the necessary administration support for federal programs. Using a conservative 15 percent needed for administrative support, the amount required in local resources for support of Title I, ESEA is $50,000; for the migrant program, $30,000; and $23,000 for the bilingual program. The total local support needed for these three programs is $105,000 in a school district with $66,250 in available local resources.

In addition to being almost too costly for a school district like Edgewood to operate under the present funding system, most federal programs are grossly unresponsive to the reality of educational needs. Title I, for example, allocates funds on the basis of the 1960 census. Thus Edgewood received funds which it is required to concentrate on 2,927 disadvantaged students. The problem is that Edgewood had 12,000 disadvantaged students by latest survey. Title VII funds must be concentrated on implementing a bilingual program in 16 first grade classes; there are 85 first grade classrooms in Edgewood that have need of a bilingual education program. Model Cities funds were to be utilized to improve the quality of programs in ten schools located in the Model Cities neighborhood, but there are twenty-five schools in the Edgewood District which have an equal need for improvement.

Additionally, Edgewood must live with the reality that it is unable to take advantage of many federal programs which provide assistance on the basis of matching funds. These include ESEA Title II, NDEA Titles III and V, Cafeteria Non-Food assistance, and others. Thus a school district with the greatest need cannot avail itself of assistance because of a lack of local funds. Due to these circumstances the Edgewood School District cannot purchase an adequate amount of guidance materials and testing supplies.

The irony of the situation is heightened when you consider that the Edgewood School District cannot even avail itself of its Regional Service Center's media service, which was financed with federal funds, on the basis of the Center's central concern; to develop and implement programs that will help raise the level and quality of educational attainment of youth in the region, particularly disadvantaged and handicapped youth. Edgewood's many handicapped youth cannot benefit from film and other instructional aids because the media service costs the school districts $1.00 per ADA, and the Edgewood School District cannot afford the additional $23,000 per year. Carrying the irony to its ultimate conclusion, we are faced with the reality that while more affluent school district taxpayers are paying for the media service twice, first through federal taxation and then through school taxation, Edgewood taxpayers are paying for it once and getting nothing.

A parallel exists in the case of school district utilization of Educational Television stations such as KLRN serving Bexar County which charges $1.50 per average daily attendance for its services. Again, these services are not available to the school district because it cannot afford 1/2 of the $34,000 required.

The point which I am trying to make is that past federal assistance has been intended for school districts with small pockets of poverty. They are grossly inadequate for a district like Edgewood characterized by poverty. Nor is this situation unique to Edgewood. Almost every school district which contains over 50% racial and/or ethnic minority group members contains the same lack of local resources for financing the educational enterprise in spite of the numerous federal assistance programs.

S.B. 3883 Responses to Existing Problems

The legislation which your committee is considering offers a vast array of alternatives for the improvement of educational opportunities for Mexican Americans and the elimination of existing inequities. Funds made available through this act can benefit school districts with large numbers of Mexican American children by receiving direct financial assistance for the operation of the schools, special grants for the development and implementation of new programs and instructional methodologies, and special services to the disadvantaged not adequately provided in other legislation.

Financial Assistance

Under the provisions of this act, financial assistance may be provided for the operation of the basic educational program. Non-categorical funds may be used as matching funds for the acquisition of resources currently being denied to the school districts which need them the most. Funds made available through the provisions of S.B. 3883 may be used to promote and facilitate the integration of Mexican American children with the Anglo American group.

S.B. 3883 funds may be used to provide salary supplements for professional personnel working with minority group children. Current practice of school districts providing a salary increase from local resources prohibits the minority group school districts from competing for certified and experienced teachers. This practice accounts for the previously mentioned statistic where a suburban school district in San Antonio, Texas, serving a predominantly Anglo population has only 5 percent non-certified teachers whereas the Edgewood School District serving a predominantly Mexican American population has 52 percent non-certified teachers. A local increment of 20 percent of the state supported minimum salary in the suburban school district creates a tendency for the better-trained and more experienced teachers to immigrate.

Programatic Activities

It is my opinion that much of the failure in the education of the Mexican Americans as reflected by dropout and underachievement statistics is attributed to the incompatability between the characteristics of the learner and the characteristics of the instructional program. School programs developed for white, Anglo Saxon, English-speaking, middle class orientated children are not responsive to the atypical non-white, non-English speaking, culturally different, disadvantaged Mexican American child. Whereas past legislation has focused on providing additional compensatory educational experiences for the atypical child, there is a need for the mass substitution of functionally responsive programs. The provisions of this act may allow school districts to implement the following:

1. Early childhood education programs to offset the deprivations of poverty. Compensatory experiences for existing programs and remedial programs after "the horse has been stolen" are inadequate. Interventions must be made during the early developmental years if intellectual development is to be stimulated for the development of maximum potential.
2. Bilingual programs which produce a compatability between the language system which the child uses upon school entrance and the language used in the instructional program

are a must. Though Title VII of the Elementary and Secondary Education Act is now providing pilot programs in bilingual education, these funds are grossly inadequate for meeting the needs of the 5 million Mexican Americans of the Southwest.

3. This legislation can promote and facilitate the elimination of the incompatabilities which exists between the culture of the Mexican American and the culture reflected in the typical instructional program. Two culturally orientated responses are not currently being made in American schools. The first, which we can label as intracultural, is the failure of instructional materials to reflect the values, traditions, orientations, and life styles of the Mexican American. The second, which can be identified as intercultural, fails to provide an understanding, acceptance, and respect for different cultures in our American society.
4. Dropout rates quoted for Mexican Americans in various reports indicate that anywhere from 50 to 90 percent of Mexican American children in various United States communities are withdrawing from school prior to completion of the twelfth grade. Again, the limited funds of Title VIII of the Elementary and Secondary Education Act fail to reach all but a limited portion of the Mexican American population. Unfortunately, many of the pilot programs are based on dysfunctional responses to the problem. Though my experiences

indicate that lack of personal financial resources and lack of school success are the dominant causes of dropouts, most of the prevention programs are based on the assumption that there exists a lack of desire on the part of the Mexican American to attend school or that this ethnic group places a low value on education. Programs committed to increasing the success motivation of the child without providing the means through resources and adequate instructional programs further aggravate an impossible situation.

5. The Mexican American, due to his minority role, has been traditionally excluded from participation in the educational enterprise. Not only does he not participate as a student, he also does not participate as a parent, teacher or administrator. Even in school districts with predominant numbers of Mexican Americans, they are conspicuous by their absence. S.B. 3883 funds should be allocated for bringing this minority group into the educational enterprise. Programs for the effective involvement of parents must be developed. The current trend of developing community involvement programs in order for the parent "to understand and support the role of the school" must reciprocate in order for the role of the parent, especially when this role differs from the typical such as the Mexican American family structure.

The school staff also fails to reflect the ethnicity of the Mexican American. New programs are needed to bring Mexican Americans into the school setting as classroom teachers and other professional personnel. Perhaps the most urgent need for Mexican American participation is in high level decision making and policy formulation positions. Though the Edgewood district has been predominantly Mexican American since its incorporation I had the dubious distinction in 1955 of becoming the first Mexican American to serve in an administrative capacity. I may very well be the first and only Mexican American Superintendent of Schools in any of the sixteen school districts in Bexar County, Texas.

Methodologies

Not only is there a need for the development of materials compatible with the characteristics of the learner but it is necessary that the methodologies be made compatible, too. Existing legislation for school assistance for the Mexican American focuses to a large degree on remediation after failure. Attempts to offset the "cumulative deficit" are doomed to failure. Early school experiences liberally flavored with failure further develop the already negative self-concept which the Mexican American brings to school. There is need for the development of instructional methodologies which are success-orientated and with such small increments of difficulty that they become positively reinforcing.

It is fairly well-documented that the segregation of children along ethnic lines has done nothing for the improvement of the education of minority group children and has been socially and psychologically detrimental. Yet, a heterogeneous mixture does not guarantee success unless educators can develop and implement strategies for providing individualized instruction within this heterogeneous setting in order for resources well beyond the capabilities of the average teacher to be brought to bear. This legislation can provide for the development of this type of an instructional program.

Perhaps in no area is the Mexican American penalized for his uniqueness in culture, language, and experiences as in the area of testing. The most obvious examples are the grave injustices suffered by Mexican American children as a result of the application of intelligence tests developed and standardized for a completely different population. Mexican Americans will benefit from the furthering of test development activities which will give the schools the necessary instruments for the assessment of potential and the measurement of achievement.

Services

Success in the classroom for the disadvantaged Mexican American will not be experienced until the schools are better able to cope with his non-instructional needs. Nourishment, medical, dental, psychological, and legal services must be made available in order to provide an adequate base for instruction.

Research

This is not intended and, therefore, should not be interpreted as a comprehensive list of the needs of the Mexican American and the necessary responses to these needs. Perhaps S.B. 3883's major contribution may lie in providing the financial resources for the identification of problems in the Mexican American barrios and the formulation of programs responsive to these needs.

SUMMARY

My testimony today intends to point out that the educational needs of the Mexican American are not being met. As a result, thousands of Mexican American children are being trapped in the cycle of poverty. School districts with their limited and increasingly strained resources are unable to cope with the problem. Additional help is needed in order to respond to the financial, educational, and social problems facing school districts with large enrollments of Mexican American children. I have attempted to list programatic activities which S.B. 3883 can make available to school districts. These activities are not currently being provided, and a failure to include them in the provisions of this act will mean their continued exclusion from the public schools. I hope that this testimony will be beneficial in providing the necessary guidelines for this legislation, and I wish to extend to the chairman and the members of this committee my sincere appreciation for being allowed to be present today.

APPENDIX A

RESOURCES/EXPENDITURES

$	66,866,170	assessed valuation
	70	assessment ratio
	46,806,319	
	.55	tax rate for operation
	257,434.75	
	.80	collection rate
	205,946.80	local revenue
	-139,696.00	local fund assignment
$	66,250,80	local uncommitted resources

$	447,600.00	state allocation/CTU
	66,250.80	local resources
	+513,850.80	total resources
	-1,081,322.00	selected local expenditures
$	-567,471.20	deficit

APPENDIX B

BEXAR COUNTY SCHOOL DISTRICTS

TAX RATES

Alamo Heights	$ 1.75
Harlandale	1.47
San Antonio	1.61
South San	1.46
Northeast	1.60
East Central	1.36
Southwest	1.20
Northside	1.25
Judson	1.20
Southside	1.89
Edgewood	1.50
Average for County	$ 1.48

Senator **Pell**. Mr. Ramirez, will you draw up a chair and join the panel? If you have a brief statement to make, we will be glad to hear it.

Senator **Mondale**. Mr. Chairman, permit me to say that I am personally grateful to you for holding these hearings on Mexican-American education as part of this study of President's Emergency Act. I think this testimony shows why we must be far more fully aware and responsive to these problems than we have been in the past.

Mr. Ramirez is the head of the staff of the Civil Rights Commission dealing with this area we are considering this morning. I think his testimony is critically important to us.

Senator **Pell**. In making your statement, you will be speaking as a private citizen, or do you speak for the Commission?

STATEMENT OF HENRY RAMIREZ, CHIEF OF THE MEXICAN-AMERICAN STUDIES DIVISION, U.S. COMMISSION ON CIVIL RIGHTS

Mr. **Ramirez**. The truth is that I did not come prepared with a statement. I am not sure in what role or capacity I am speaking.

My name is Henry Ramirez. I am Chief of the Mexican-American Division at the Civil Rights Commission, where we have been engaged in studies that are now a little over a year old to determine and assess what is the state of education of the Mexican American today.

So, we are looking into a very wide-ranging field of elements in the educational world in the Southwest. Our survey went to about 76 percent of all the Mexican-American students in the Southwest. It went to all districts that had 10 percent or more Spanish surnames. This was about 540 districts. Within those districts another questionnaire went to the school principal. This was about 1,200 schools that were involved.

The information that we acquired came directly from principals and superintendents, and in many cases teachers. The information was a very severe eye opener in terms of what is the status of education for the Mexican American today. Some of the basic things that we have found thus far—we have not issued any reports as yet, although we are on the verge of doing that—are that the educational deprivation of the Mexican American is much more severe than that of, in many cases, the American Indian, the black and the Anglo, whether you talk about dropouts, achievement, financial support, the preparation of the teachers, or segregation.

About 43 percent of all Mexican-American students in the Southwest attend schools that are 50 percent or more Mexican American. Three hundred thousand attend schools that are 80 percent or more Mexican American. Of course, in elementary schools the figure is even higher. We find that ethnic isolation exists not only within the school districts where students may attend what may be called the Mexican school, but we find it to exist in a different way, a way different from that which the blacks have had, in that there are districts that are Mexican districts and these may be found in metropolitan areas such as Dr. Cardenas told us a while ago in terms of Edgewood.

We will find this in Fresno, we will find it in Orange County, we will find it in Phoenix, and many other places, even in small towns where in one small town there will be two districts. One will be the Mexican district. One will be the Anglo district.

I did not come to give you statistics. I did not know I was going to be asked to provide some of these basic facts. In terms of faculty, the Mexican-American faculty, there are only about 11,000 teachers in the Southwest out of about 350,000 total. To be precise, 3.6 percent of all the teachers in the Southwest are Mexican. The number of Negro teachers are two to one.

In terms of board members, Mexican-American board members are really very few in number. If you go to districts in California, for example, that have a majority of Mexican Americans in them, rarely—in fact, in only two cases—do Mexican Americans compose the majority. In most other districts they are not even there to be seen. There are about 44 districts in the whole Southwest that are 80 percent or more Mexican American. That gives you the picture in terms of isolation.

Most of the Mexican-American teachers are assigned to Mexican-American schools. California always has to be very different in this respect in that principals of Spanish surname in California generally tend to be assigned across the board, which is 10 percent Mexican American school or 20 percent or 50 percent or 80 percent. Likewise, teachers tend to be assigned across the board in California. But not so in the rest of the Southwest.

In terms of achievement, we find that the reading rates of Mexican American students are terribly behind that of other groups. We find that the rate of dropout is such that of the 1.4 million Mexican American students in school today, a very conservative figure, extremely conservative—and this is the figure the superintendents gave us—is that half of them will never see the 12th grade.

I am reminded of a story that one of our staff just brought back to us from a town called Guadalupe in California, where he had witnessed a graduation ceremony of eighth graders. When he asked why there was so much pomp and circumstance attached to an eighth grade graduation—it took place in the local theater—the response of the principal was that "We have to make it big, we have to make it beautiful, because this is probably the last graduation these children will ever see."

We find also that in every State and in almost every district there are principals, contrary to school district policy, that have a practice of suppressing the use of the native tongue of these students. The suppression methods vary from harassment sometimes to corporal punishment, sometimes to the use of other students to correct those who use the wrong language. We find this suppression of culture goes throughout the school life. For example, about a year ago I had an opportunity to talk to a superintendent here in Washington who was visiting from New Mexico. We were at a very lovely banquet where we were entertained by a few guitarists singing some beautiful Mexican songs. And the man just sat back and opened his chest up and said "La musica es mi vida." "It is the music of my life, that music just turns me on, there is nothing like it."

I asked him, "Well, you are superintendent of a very large district which is almost a hundred percent Mexican American. You find this music to be beautiful? You find it is consistent with your culture and things that you love, and you have all these kids who, I am sure, also enjoy it." Then I asked him, "I am sure you must bring that kind of music into your school life and your school curriculum for the students?"

His reaction was immediate. He sat back very quickly, stiffened his back and said, "No, we can't do that, that is un-American."

Those kinds of activities we at this time cannot measure, but we are measuring the extent to which schools do provide for these cultural activities, do provide for the social life of the student in terms of his background.

Now I am talking in generalities, I am sorry that I don't have the specifics to give you, but we do know that Mexican American students in segregated schools do not achieve as well as those who are in integrated schools. That, our information has shown positively.

We find that segregated Mexican American schools receive less money than the integrated. That, we can demonstrate very clearly.

Senator PELL. Could you submit some documentation backing these statements up? They would be helpful.

Mr. RAMIREZ. Well, the Civil Rights Commission will be issuing these in a matter of a month now.

Mr. RUIZ. They are presently unreleased.

Senator KENNEDY. As I understand, that would include what they have been able to determine about the distribution of title I funds as well?

Senator PELL. This is beyond your responsibility right now, is it not? We would appreciate any documentation of the statement you have made. We would like to have them as an aid when we mark up the bill, which could take place in a couple of weeks.

Mr. RAMIREZ. I will try to do so.

Senator KENNEDY. Mr. Chairman.

In terms of the allocation of the resources, the expenditures of Federal funds, do you have the figures available to the Commission which would indicate that less title I funds have gone to the Spanish speaking areas, the Spanish speaking schools in other areas of the State of Texas?

Mr. CARDENAS. In specifics as related to the school district I cited, the case of Edgewood, which is predominantly Mexican American, the distribution of title I funds is on the basis of the 1960 census. Mexican Americans were not counted in the 1960 census. In this school district, we have 12,000 disadvantaged children. The allocation is for 2,927. So, less than one-fourth of the children that qualified under economic deprivation are receiving title I funds.

Senator KENNEDY. I was thinking not only in terms of the interpretation of the census figures, but as well the matter of the policy under which the resources or funds for one reason or another are diverted from these areas. I was wondering what the Civil Rights Commission had been able to determine on this point.

Mr. RUIZ. Mr. Glickstein, our staff director, who testified here a couple of weeks ago, as part of his testimony and in referring to title I of the Elementary and Secondary Education Act affirmatively stated that it had been ineffective in spite of the enormous appropriations, because the funds were so diluted.

So that may be a partial answer.

Senator **Kennedy**. That is part of it. Not only because of the dilution of it, but I was wondering if there has been diversion or at least a holding back of the funds that are available from these school areas and school districts. I was wondering if the Commission itself had been able to determine this.

Mr. **Ramirez**. We have not been able to determine that yet for several reasons. One, we are a very poor commission and didn't have the money with which to prepare this information. We are now in the process of contracting with an individual to prepare this for us. We have the data in our files. I believe the data will demonstrate and the data specifically refers to the Federal funds received by districts.

We will be able to separate out by districts the extent to which they receive Federal funds. We will be able to provide a clear picture. But not specifically in terms of title I.

NECESSITY OF LEGISLATION

Senator **Pell**. I would like to ask one direct question to each of you.

If we have a choice between passing this legislation with the Mondale type of tightening up amendment, as we did for the $150 million, would you recommend that we pass it or not? What would you say?

Mr. **Reynoso**. Yes.

Mr. **Ruiz**. If the additional funds are available, yes. Because that would be two different parts to the same bill.

Senator **Pell**. But if we pass the $1,350 million along the same guidelines as the $130 million would you recommend passage or not?

Mr. **Ruiz**. Yes, it would be nationwide in impact instead of sectional.

Mr. **Cardenas**. I would recommend it be passed as amended.

Senator **Pell**. What would you say, Mr. Ramirez?

Mr. **Ramirez**. I concur fully.

Senator **Pell**. Thank you.

Mr. **Ruiz**. I understand that title VI review teams can give us the information with respect to title I. I was just informed of that.

Senator **Pell**. If we are faced with a situation, and I hope we are not, where we could not get Mondale-type amendments accepted and we were left with the bill introduced by the administration, do you think we would be better off to pass it or not?

Again, I would like to ask each of you. Mr. Reynoso?

Mr. **Reynoso**. The answer would be no, and I have two footnotes. I understood that the title IV people are supposed to enforce this. I understand further, there are simply no Spanish-speaking personnel there with the exception of one, I understand, in the Washington office. Two, the Justice Department, after 16 years, has entered one case dealing with the segregation of Spanish speaking. So I would consider it a political payoff to those districts the administration wants to reward and would vote no.

Mr. **Ruiz**. I will reecho the words of Mr. Reynoso.

Mr. **Cardenas**. I will go along with that, sir.

Senator **Pell**. Mr. Ramirez?

Mr. **Ramirez**. Very definitely not.

Senator **Pell.** In other words, to digest your view, you are really unanimous. As introduced by the administration, you would be opposed. With Mondale-type amendments added on you would approve although you recognize it could be improved further.

Senator **Kennedy.** Has the Commission looked into the discrimination against Puerto Ricans in the Northeast?

Mr. **Ramirez.** The Commission has not conducted a study or investigation. It has a Puerto Rican assigned to the New York office. It is now engaged in the process of determining whether or not it should have a hearing or a conference or simply a preliminary field trip that will commence in the next 2 weeks.

I prepared a memo outlining what I thought should be done. It is my understanding that this was to commence in the next couple of weeks, what ever decision will be made.

Mr. **Reynoso.** May I add something to that? I am from California and I know more about Mexican Americans. Recently I met with a Mexican American and Puerto Rican group in Chicago. They wanted to ask me specifically about the education of the mentally retarded cases that we in California had filed. We discussed at great length the educational problems those two groups had in Chicago. I was surprised in the way that the problems they have are so vastly similar in terms of language and culture, and so on.

Again, I know perhaps even less about New York and the concentrations there, but I would venture to say, from the considerable literature we have read, and so on, that again we see the same sort of problems there.

Senator **Kennedy.** I think that is very true. In Massachusetts, we have increased our Spanish-speaking population about 20 times during the past 10 years. This also is typical of many other communities in the Northeast.

It would be extremely useful and helpful in terms of the total review to keep this in mind. I would be very interested in the responses you receive and in the results of that study.

Mr. **Ruiz.** Senator, may I suggest that you write a memo to the Civil Rights Commission on that subject, because one of the proposed projects of the future is to get into the Puerto Rican problem and a letter or a note would accelerate the speed with which the problem necessitates.

Senator **Kennedy.** Of course, as a Commissioner you will carry back the request.

Mr. **Ruiz.** I certainly will.

Senator **Kennedy.** We will reinforce it with correspondence.

Mr. **Ruiz.** Yes, indeed.

Senator **Kennedy.** We will get as many signatures on it as would be useful to demonstrate our concern.

I would like also to ask whether you have gotten into the question about the discrimination in meeting the educational needs of Indian youth, in this country and particularly in Alaska. Is this anything you have thought about in terms of need?

Mr. **Ramirez.** The survey that we conducted asked for what we call outcomes of student achievement in reading, dropout, retention, repetition, suspensions, the number in low tracks, the number in high tracks, the number in "FMR" classes, and so on.

All the questions were presented by Mexican American, Anglo, black, and other. When we came to "other", we were able to zero in very accurately on the Indians in New Mexico and in Arizona. So we will have information dealing with that group on these specific areas.

Senator KENNEDY. Of course, as we all know, the educational experience of Indian youth is not typical in the New Mexico area. We hope you would at least consider the extraordinary kind of problems faced by Indian youth, as suggested by the results of the Education Subcommittee inquiry.

We will also write a letter to the Commission on that.

Mr. RUIZ. Thank you very much.

Senator KENNEDY. I will just say, and then I will yield to Senator Mondale, one of the things that would be interesting to me as a chairman of the administrative practice committee is how the Commission itself divides its resources and personnel. How does it decide whether they are going to use those resources to look into the Spanish-speaking problems—whether it is Mexican Americans or Puerto Ricans—or Indian problems or whether they are going to continue in other areas. The allocation of resources is a perennial problem for many administrative agencies.

I think it would be helpful to us who have supported the Commission and supported the increase, for example, this year in the Commission's funding of $2.3 million additional in the Judiciary Committee to try to find out how we are allocating these resources.

It certainly appears, as I think the Mondale committee has pointed out so dramatically, that the educational opportunities of our Spanish-speaking citizens are severely restricted. This is a area of great unmet need. I would certainly hope that the Commission would move more strenuously into these areas.

Senator MONDALE. I think we might have observed a very unique occurrence. Most of the time when we hold these hearings, we are all alone. But today the hearing room is packed—many people cannot get in. I think this reflects the feeling that this is a subject that has been ignored far too long.

We finally come to an investigation of the second largest minority in this country and we hear testimony, as we have today, that perhaps more than any other group they are still suffering a great disadvantage from special problems of language and education. We have to dig around to find even elementary data, not only on the effect of disadvantage but even on the number of people involved. It certainly shows that this is an area of desperate need which is not getting an adequate response.

Superintendent Cardenas reports that all of these programs which we thought were working so well have one hitch. That is, they require local funds and in the target area the people needing help cannot be served because they cannot generate the local funds. We should have known that a long time ago. This shows how desperately needed are the kinds of information and testimony from the kind of witnesses we are hearing today. I commend the chairman of this committee for conducting this hearing. I think it is just the beginning. We need a lot more.

Mr. **Ruiz.** I think this is the beginning. This is interesting if I may be permitted. The day before yesterday a group of us had a meeting with our vice president and a press conference followed, and he printed it. He was surprised that Mr. Martin Castillo, the chairman of the cabinet committee for the Spanish speaking, spoke good English, and that came out in the newspaper.

Senator **Mondale.** Who was surprised?

Mr. **Ruiz.** One of the members of the press. It came out in the newspaper. This is where we have been relegated to. The reason for that is that in many of these areas, for example, our Mexican Americans are speaking English with a Spanish accent and the more horrifying prospect is coming up that they are beginning to speak Spanish with an English accent. Imagine on the scale of economics when you go up if you speak Spanish with an English accent and English with a Spanish accent, what chance do you have.

Senator **Mondale.** I have wanted very much to meet you, because in my opinion, the California rural legal services program is the outstanding program of its kind in the country. That is saying alot, because many of them are remarkable. I was impressed by your observation that you felt enforcement was the key to this problem.

Mr. **Reynoso.** That is correct.

Senator **Mondale.** Enforcement is the most crucial stage with all minorities, but with Mexican Americans it has virtually not begun. Did I understand you correctly to say that there has been only one lawsuit brought by the Justice Department?

Mr. **Reynoso.** Even that was not brought by the Justice Department initially, but they have joined in it. That is correct. The reason that we here in effect are pleading for legislative assistance is, that perhaps regrettably we have not had the political clout to get it out of administrative agencies and out of the administration.

I myself have worked for a Federal agency, for a State agency, for that matter, and I find that day in and day out we have the interest groups that have some organization, if you will, I work with the Equal Employment Opportunities Commission. The women's groups, the black groups, and so on, were far better oganized to make the committee do its job. Seldom did we get that type of pressure from Mexican-American groups. Human beings seem to be all alike. They will make a choice of one or two or three choices they have before them, depending on the political problems of the day, and that is the good guys and the bad guys in government, and I assume in the Senate too.

But this means that we have not been able to put that type of pressure on the legislative agencies. We as lawyers have seen that we are able to put pressure on them when we are able to say clearly the Congress intended that this be done and the administrative agency has converted it into something else.

Senator **Mondale.** There have been several people who have suggested that one way to achieve the objective embodied in the pending legislation would be to set aside $100 million or $200 million which would be available for private enforcement efforts; so that, for example, the Mexican-American Legal Defense Fund could bring suit and, if it won, could collect reasonable legal fees and costs. With a small amount of funds you could get a great deal of leverage with which to bring about the legal enforcement of long-existing but greatly ignored constitutional principles. Does that make sense to you?

Mr. **Reynoso.** Senator, that would be the best-spent money that I think was ever suggested in terms of enforcement. It is amazing how, when we have gone into a district and we find it difficult to get allegedly public documents, like title I reports, and so on, once we get them and once they know we are around, we as lawyers, the local educational agencies have acted.

For example, title I often requires local advisory committees. We have found that very often none existed, even on paper. Just a letter or indication to that district that we knew about it and they at least started acting upon it. I would like to suggest that as in any type of ombudsmanship, to have an independent agency, such as legal services or any other agency, even with a small amount of money, far less than what the agency itself would require, would bring about a tenfold enforcement of those provisions.

Senator **Mondale.** What I thought we could do is set aside $100 million or $200 million which could be paid out, at the completion of a successful lawsuit, to private attorneys, for example, NAACP, the Mexican-American Legal Defense Fund, legal services program, to replenish their funds for the enforcement of constitutional principles, on the theory that the real problem in America today is not a matter of economic incentives to integrate, but a lack of will, lack of political clout.

Mr. **Reynoso.** That is correct.

Senator **Mondale.** This idea is based on the assumption that the courts are for constitutional protection. Would you agree with that?

Mr. **Reynoso.** I certainly would. I would like to point out in the very complicated *Corpus Christi* case I mentioned earlier I noticed with some interest, thought it would have dismayed us in view of the fact we were coming here to talk about $1.5 billion, that the judge, after hearing what we wanted to do, noted that his analysis was that all the integration he was ordering in Corpus Christi could be done with relatively few funds.

Perhaps that is why we are all in agreement that unless you are going to use the funds well, don't waste the $1.5 billion. But this would be extremely well spent to have that set aside for this type of third party approach to whether or not the constitutional rights, which after all this emergency bill wants to incorporate, are in fact being lived up to.

Senator **Mondale.** Dr. Cardenas, there is a provision in this pending legislation that will permit funds for testing, which may be all right. But I have heard that in some cases testing is conducted for the purpose of tracking. What is your opinion as an educator of the dangers of tracking strategy for equal educational opportunity?

Mr. **Cardenas.** Most of the tracking is being done through intelligence testing. The intelligence testing as far as the Mexican-American is concerned is based on fallacy, based on a person having common experiences and testing these common experiences which the child may not have had and, in the case of the Mexican-American, has not had. It also has the complication of language. Therefore the testing is inadequate.

Senator **Mondale**. First of all, the tests are inherently biased in favor of a white middle-class background.

Mr. **Cardenas**. That is right.

Senator **Mondale**. It is hard for a minority child to do well, particularly considering the language problem.

The second point I would like to make is that every bit of evidence we have had, indeed this was the main point of the Coleman report and others indicates that children learn more from each other than from the system and that the key to quality education is to permit disadvantaged children to go to school with advantaged children. If you have a tracking system where you separate the disadvantaged children into different classes, you are not going to have this interaction which is essential to quality education.

Mr. **Cardenas**. I agree with that, Senator. There is a wide practice of segregation and in some cases we use a euphemism, such as homogenerous grouping. Yet there is no educational evidence that such grouping is beneficial to the child. There is a lot of educational, psychological, and social evidence that it is extremely detrimental.

Senator **Mondale**. Senator Kennedy will recall that on our trip to Alaska, where the tracking system was used, the Eskimos were almost exclusively in the bottom track. When you see tracking, it seems to me, it does not appear a very subtle form of racial and ethnic discrmination.

Mr. **Cardenas**. I see the need for assessment of the potential achievement. It is desirable for some of the funds to be allocated for development of techniques and methods of testing, in order to assess the potential of achievement of the atypical child.

Senator **Mondale**. I agree with that. I am fearful it might be used for other purposes.

Mr. Ramirez, you, I gather this morning for the first time, gave some conclusions of the Civil Rights Commission study on Mexican American education which, as I understand, it is the first national study of its kind. This is the first attempt to have a national survey in some depth; is that correct?

Mr. **Ramirez**. Yes, sir.

Senator **Mondale**. How soon, in your opinion, might this date be made available?

Mr. **Ramirez**. Let me start out by saying that when you are not counted you don't count. I think that is very true in NIH, we are not counted. So we don't know what kind of grants or help are going to provide greater numbers in the forces of public health delivery systems. Our reports will be coming out separately. We hope the commissioners will approve the first one in August, possibly the second one in August, the third one in September and two others in October.

So, we are talking about releasing these five first reports over the next 3 months. They are the very first that have ever been done on the education of the Mexican American.

Senator **Mondale**. The information that you have cited about the extent and effect of racial or ethnic separation, drop-outs, underachievement, discrimination by the faculty, the limited number of Mexican American and Spanish American faculty—these things are essential to this committee's work.

As you know, we have been trying to get this information from the Commission. We are very grateful for these conclusions. They will help us a great deal. I wish we could get that data. They have it. I don't know why it is not available.

Senator PELL. I think your question could be more properly addressed to the Commission, not the staff.

Senator MONDALE. Maybe I will just write another letter.

Mr. RUIZ. I think so. I tried to get some of the information yesterday, but I was simply told that it was about to be released and would be released very soon and for that reason I was unable to get it.

Senator PELL. You are a commissioner yourself?

Mr. RUIZ. Yes.

Senator PELL. So, if anybody should be privy to these conclusions in their final form, it would be Mr. Ramirez's boss, which you are.

Mr. RUIZ. Unfortunately, we had our meeting last Monday. Perhaps if we had delayed our Commission meeting until, let us say, tomorrow there would have been no diffculty.

Senator PELL. This particular committee has some responsibility for the bills. We will write a letter along the lines Senator Mondale has suggested—requesting a summary of the summary, something of that sort, which would help us in our work.

Senator KENNEDY. Doesn't the Freedom of Information Act entitle us to that?

Mr. REYNOSO. It is not a completed report yet, as I understand it. I guess technically they are working papers and the public are not entitled to them.

(The following information was subsequently supplied for the record.)

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., August 6, 1970.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Education of the Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: I am writing this letter on behalf of myself and Commissioners Horn, Rankin, Freeman and Mitchell.

On Friday, July 10, 1970, Commissioner Manuel Ruiz and Mr. Henry A. Ramirez, a Commission employee, testified before your Subcommittee which is holding hearings in conjunction with the Select Committee on Equal Educational Opportunity on S. 3883, the Emergency School Aid Act of 1970. We are writing this letter to clarify the record.

When Commissioner Ruiz appeared before your Subcommittee, he was not speaking on behalf of the Commission but as an individual. The position of the Commission on the Emergency School Aid Act of 1970 was set forth in the testimony of Mr. Howard A. Glickstein, Staff Director, on June 24, 1970.

Mr. Ramirez was not advised that he was going to testify until moments before he appeared. Accordingly, he was not able to prepare himself.

We affirm the testimony of our Staff Director to the extent it differs from that of Commissioner Ruiz. We are in favor of the double counting provision of S. 3883. We support the deletion of language from Section 5(a)(3) which authorizes the use of funds for educational programs unaccompanied by desegregation or the elimination of racial isolation. We support the Administration's bill whether or not any amendments are attached to it. It is a good first step.

We cannot emphasize too strongly that no study is being suppressed by this agency. During the course of Mr. Ramirez's testimony it was suggested several times that the Committee was being provided information not previously made available to it. We believe that such suggestions are unfair and misleading.

Mr. Ramirez's testimony, almost in its entirety, is contained in the preliminary staff analysis sent to the Select Committee on Equal Education Opportunity on

June 15 and submitted as an exhibit before the Subcommittee on Education on June 24. Both the staff analysis and Mr. Ramirez's testimony explain the methodology of the study, provide data on ethnic isolation, on the number of teachers and their location, on reading and dropout rates, on suppression of the use of Spanish and on educational finances. The only data provided in Mr. Ramirez's testimony that is not contained in the preliminary staff analysis is some information on the composition of school boards. To have suggested that it was more difficult to get information from the Commission than from the Defense Department, when that information already had been furnished, is extremely puzzling to us. The staff of this agency has cooperated closely with the staff of the Select Committee. We have not withheld anything that was appropriate for release.

Our Mexican American Education Study involves a great accumulation of data. This has been the easy part. This data now must be analyzed and written up. This is taking time. Adequate staff and funds are assigned to this study, and this is not the cause of the delay. This Commission bases its reputation on the accuracy of its reports. No reports are released until thoroughly reviewed. Part I of this study just went through its fifth draft. It only recently was reviewed by Mr. Ramirez's supervisor. This week, it was reviewed by the Staff Director and shortly will be submitted to the Commissioners. We would be unfaithful to our mandate if we released reports and data that were not fully and adequately authenticated and reviewed.

Some members of the Subcommittee expressed an interest in the Commission's work with respect to Puerto Ricans. The Commission on June 6, 1970, responded to an inquiry by Senator Kennedy concerning our efforts to deal with the problems of Puerto Ricans. A copy of this correspondence is enclosed.

Inquiry was made regarding the Agency's work with Indians. This agency has been developing an Indian program. We sponsored a conference of Indian leaders in December of 1969. Since then we have begun preparing informational handbooks which will explain Indian rights in various subject matter areas. This project was undertaken after careful analysis of the various alternatives. We believe it has the potential to be very valuable.

In terest was expresed in how we allocate our resources among studies dealing with different racial and ethnic groups. A substantial amount of our very limited resources are allocated to the study of the problems of Spanish surnamed Americans. During the first half of this past fiscal year the project receiving the second largest allocation of funds was the Mexican American Education Project. Our work on Mexican American Administration of Justice problems also received a significant allocation of funds. The hearing we held in San Antonio in December 1968 cost over $200,000, and large sums have been spent in followup on that hearing. In addition, almost all aspects of our work involving the appraisal of the adequacy of Federal civil rights laws and programs deal with the needs of Spanish surnamed citizens. We will be happy to provide you with whatever further information on this score that you require.

The Commission on Civil Rights always has been open and forthright in its dealings with Congress. We are distressed at the accusation we are suppressing information. We hope this letter clarifies the situation. We would appreciate it if this letter were included as part of the hearing transcript.

Sincerely,

THEODORE M. HESBURGH,
Chairman.

Senator MONDALE. The chairman asked whether, with what he described as the Mondale amendments, the pending bill would be satisfactory to you. The amendments to which he made reference were three amendments we tacked on to the $150 million emergency bill. One prohibits funds from going to schools that are transferring property to private segregation academies. The second prohibits those funds from being used to supplement local moneys converted to other purposes. The third requires it to be a national program.

That is all those three amendments do.

Senator PELL. My question was not the approval, but whether, if they are faced with the alternative of no bill or a bill with your amendments.

I understood you thought it could be considerably improved beyond that.

Mr. Reynoso. Yes, the question as posed, we said assuming the spirit of the amendments, being a national bill, and so on, it would do more good than harm. That is the standard I am applying. I assume that is the standard the others are applying.

Senator Pell. They are not happy with it, but would accept that minimum rather than nothing.

The chairman of our full committee is with us. I am sure he has some points to make.

Senator Yarborough. Mr. Chairman, I regret I was not here at the beginning. I agreed to chair the Senate today from 10 to 11.

Senator Pell. Was the Vice President busy?

Senator Yarborough. He was not present, so I had to substitute in presiding over the Senate. But I have glanced through your statement.

One of the great problems in your district is that San Antonio does not constitute an independent school district or separate school district, as many cities do. It is fragmented into many districts and they put the poor people in one district by themselves and in another the affluent areas where you have the tax base. The city is balkanized, you might say, by being cut into many independent legally co-equal districts. But it means, as you have pointed out, very little educational opportunity for those within districts where most of the poor people live, where there is a low tax base. Is that the situation?

Mr. Cardenas. That is correct, Senator. In San Antonio there are 16 school districts. I have presented some statistics that compare the characteristics of the Edgewood independent school district with some of the other school districts, particularly one of the suburban school districts. I think the comparison is rather startling.

In terms of such things as the number of library books, in terms of the per-pupil expenditures, in terms of the State aid which they receive, in terms of many of the resources available and being presented to the children.

Senator Yarborough. In your prepared statement you have a table of the tax base per pupil in these 16 districts. I wish you would furnish the committee the number of pupils in each one of these districts, the per capita expenditure per pupil in each district, and the number of library books per pupil in the districts. I think it would be very informative when we realize this is all part of one city.

The Edgewood district is in what geographical portion of San Antonio?

Mr. Cardenas. It is in the western part.

Senator Yarborough. In drawing the boundaries of those districts, were the downtown office buildings placed in the Edgewood district?

Mr. Cardenas. There is no great number of office buildings or industry.

Senator Yarborough. Did they put in any of that industry? You have some very valuable industry there.

Mr. Cardenas. No, sir; even some of the most recent programs in economic development have failed to bring in any industry or business into the school district. In fact, there is a concentration and the school district has been earmarked for housing, particularly mutiple-family housing, which I think is going to ghettoize the school district.

Senator Yarborough. That brings in more children without the tax base to support their education, does it not?

Mr. Cardenas. That is right.

Senator Yarborough. And no provision has been made for sharing the tax moneys from the other districts on any kind of equalization plan?

Mr. Cardenas. Not in the city of San Antonio.

Senator Yarborohgh. What portion of your revenues are derived from the State allotment, per capita allotment, and what portion from the local tax base?

Mr. Cardenas. In the Edgewood School District about 94 percent of the expenditures are State supported and about 6 percent locally funded. The problem here is that other school districts in spite of the higher percentage of local funds, are not using all the moneys for meeting their share of the minimum foundation program and have surplus moneys which means they can pay a schoolteacher a thousand dollars above the minimum salary. Therefore, Edgewood has been paying schoolteachers a thousand dollars below other school districts within the same city, and in some cases with no specified boundary other than one arbitrarily established.

Therefore, it is very difficult to compete with other districts for experienced and trained teachers.

Senator Yarborough. That is the reason for the data you gave us that 52 percent of the teachers do not meet the minimum requirement for certification prescribed by the State laws?

Mr. Cardenas. That is right.

Senator Yarborough. You mentioned minimum foundation funds. The State of Texas appropriated money out of State treasury to supplement the local taxes. This is an evolutionary law, is it not? In the old days, each school district raised its own money. Now the State moved in with so-called State aid decades ago and gradually built that up to where it is the major portion of the revenue now, the States allotment.

How much does the State itself, out of the State treasury, pay these school districts for each child on the average daily attendance record?

Mr. Cardenas. It varies with the economic status of the county and school district. Using two school districts in San Antonio, a suburban school district received $221. In that year Edgewood received $217 in State aid per child.

Senator Yarborough. You point out some of the affluent school districts do not use this money up to meet minimum standards. They go beyond that, but they get the money just the same?

Mr. Cardenas. That is right.

Senator Yarborough. It is not based on a formula like the Elementary and Secondary Education Act, where it is based on the number of poverty-stricken people in the district. With State aid, the district that is above that does get that as surplus money and can use that State money to pay their teachers a bonus above the general salary level of the teachers in the district generally?

Mr. Cardenas. That is right.

Senator Yarborough. That goes back to the Biblical admonition, "To him who has shall be given, to him who has not shall be taken away, even that which he has will be taken away."

Now, have they lapped the model cities program into the Edgewood School District?

Mr. Cardenas. About one-third of the Edgewood School District lies within the model cities.

Senator Yarborough. What will that do to the income and tax base and student population? Will their putting a third of your school district in the model cities program aid or worsen the conditions of education of children in that district?

Mr. Cardenas. At the present time, because of the heavy emphasis on housing, particularly multiple-family housing, and its influence on education, I think it is going to worsen it.

Senator Yarborough. So they put the children in there for you to educate, as they do under the model cities program, they take a third of your district and put it in the other territories east of you in San Antonio, and under the model cities program you become I guess what you call an immodel city. In the Edgewood District, the children have less money per capita.

Mr. Cardenas. If the model city program were successful so far as education and other characteristics are concerned, then one-third of the school district would join the "haves," and two-thirds would still be the "have-nots."

Senator Yarborough. You have pointed out in your statement that under the bilingual education program you receive money for a certain number of the schools in your district, 16 first-grade classes, but there are 85 first-grade classes in Edgewood which have need of a bilingual education program.

You know, of course, of the action of the HEW and the Bureau of the Budget over the years, first in fighting the bilingual education bill which we passed in 1967, which was a congressional achievement. Then the Bureau of the Budget recommended just a little token appropriation.

We in the Congress have pushed those appropriations up over the constant opposition of the executive officers of this Government. My amendment on the floor added 5 more million to the $25 million. Last year we got up to $25 million.

The first time, the Bureau of the Budget and the executive department and the President recommended only $10 million to educate these 3 million children from non-English-speaking homes, 2 million being from Spanish-speaking homes.

What portion of the moneys that you applied for did you receive for bilingual education from HEW?

Mr. Cardenas. There was an allocation that was made, and I think that we received enough for funding 16 of the first-grade classes, out of the 85 needed.

Senator Yarborough. As a result of the tokenism of the administration on the bilingual education bill, we had 16 funded and 85 left out?

Mr. Cardenas. That is right.

Senator Yarborough. Ninety-five percent of the children in your district come from Spanish-speaking homes?

Mr. CARDENAS. Ninety-three percent, which gives us over 20,000 Spanish speaking children in the school district.

Senator YARBOROUGH. Have you found this bilingual education program of benefit in the education of the children there, where you have the money to implement it?

Mr. CARDENAS. It has been extremely beneficial.

Senator YARBOROUGH. The aim is to make the child literate in both languages, the mother tongue of Spanish and national language of English?

Mr. CARDENAS. That is right. It also allows us to instruct the child in the language system which he brings to school.

We have two other efforts. One is the further development of the Spanish language, and the other one, of course, is the instruction in English as a second language.

Senator YARBOROUGH. Even with the meager source you have, would the educational process of these children be greatly enhanced if you had full funding of the bilingual education program in the amount of the $80 million authorization we have put in the bill this year?

Mr. CARDENAS. No question about it, sir. Some things, such as staff training of teachers—we do not have the funds for retraining of teachers for going into bilingual education—and the acquisition and/or development of instructional materials and methodologies. A lot more money would be needed just in this school district.

But there are thousands of school districts that have large numbers of Mexican-Americans that are not participating, because of lack of resources.

Senator MONDALE. What did the administration request for bilingual?

Senator YARBOROUGH. I think they requested this year $21,250,000. Last year we pushed it up. They requested only $10 million. We pushed it up to $25 million, then under that 15-percent general cut, they cut it back to $21 million.

This year it is better than they ever had before. They requested $21,250,000. We made it $30 million in the Senate. We ought to have $80 million. We put through this law this year to authorize $80 million. I hope we can get it next year.

I will not dwell much longer on this, because of the other Senators here.

We have many questions, Mr. Cardenas, but we have a bill about to be introduced to push for money to educate bilingual teachers. Is there an adequate supply of teachers qualified and especially trained to teach bilingually in the State at this time?

Mr. CARDENAS. In the United States I would imagine that the supply of teachers who are bilingual and are prepared to teach in bilingual programs is probably less than 10 percent, and may be as low as 5 percent of the need.

Senator YARBOROUGH. It takes longer. Even though a person were fluent in two languages, Spanish and English, or, in Massachusetts in Portuguese and English, or whatever they are teaching, their being fluent in both languages does not qualify them as teachers?

Mr. CARDENAS. That is right. As far as training teachers is concerned, 99 percent of the need is not being met.

Senator **Yarborough**. Training of teachers?

Mr. **Cardenas**. That is right. In other words, 99 percent of the teachers do not have the language facility and training for teaching bilingually.

Senator **Yarborough**. There is a great need to teach these teachers so that they can teach bilingually. I want to assure you that the Congress is moving on that.

I want to compliment you on the great support you have given to this needed legislation to benefit the children of America.

I happen to know, Mr. Chairman, from other committees and other work that one of the greatest demands, unmet demands, for secretaries in business offices in Texas is for bilingual secretaries. They have not had the education, and they can't qualify. Our largest minority is the Spanish-speaking people, 600,000 in the State, and in many law offices, business offices, there are good job opportunities that pay good wages for that type of secretary.

There are many other types of jobs open to people who are bilingually educated. Here the Spanish-speaking people who are economically deprived have jobs crying out for their talents, if they had the education.

This is a great economic loss to the country—educational loss, family loss, sociological loss, a loss in every way. I commend those who set this hearing up.

Mr. **Reynoso**. I would like to point out under a broad reading of the bill under discussion, S. 3883, I actually believe, as a lawyer, that some of the funds could be used for bilingual education, because that is one of the mechanisms for integration.

You have correctly pointed out the antagonism of this administration to this type of approach. That is why we have been saying here today unless that is built into this bill, we are afraid that that type of mechanism simply will not be utilized to bring about integration. As the bill says, "To improve the quality of educational services."

Senator **Yarborough**. I was looking at your status, here. You are director of the California rural legal assistance program. You are not the man in HEW interpreting this law. Your liberal, progressive interpretation has run into what we have run into in HEW. Since 1967, they have interpreted it not to cover anything that aided bilingual education.

Mr. **Reynoso**. I would so predict, no doubt we will be in court trying to get a judge to agree with you, that you folks meant that bilingual education was really a good technique for integration.

Senator **Yarborough**. Just as I came in, some statement was being made about the expensive long process through the courts of getting adjudication. The Corpus Christi case was mentioned.

I don't know whether it is a matter of record in the courts or anything else, but I feel that I am stating the fact, that the Steel Workers Union financed that suit. The Mexican-Americans did not have the money to do it. The steel workers of the U.S. put up the money to fight this case through the courts for the Spanish speaking people.

Senator **Pell**. Perhaps this is a question that could be handled within the report on the bill.

Senator YARBOROUGH. I thank you for setting up the hearing and cosponsoring the bill.

I regret—I have had three calls since I have been here—I am called away to another meeting.

I want to thank Dr. Cardenas. He is making a great fight for educational opportunity for these more than 20,000 school children in his district, and for many others similarly situated in our State.

I wish you every success, Dr. Cardenas. It has been an honor to work with you.

Mr. RUIZ. On behalf of the other members of the committee, we wish to thank you, Senator Yarborough. I have known of you for years.

Senator YARBOROUGH. One of my prides at the moment is the privilege of being the author and cosponsor of the first bilingual education bill ever introduced in either branch of the Congress.

Mr. RUIZ. I followed it very closely.

Senator YARBOROUGH. Thank you.

Senator PELL. Senator Kennedy.

Senator KENNEDY. I have one final question.

Even with the Mondale amendments, would you like to see us go ahead and authorize and appropriate the additional money of $1 billion, or would you suggest that we wait and see how that $150 million is being spent with the Mondale amendments before we go ahead?

Mr. REYNOSO. My opinion is very strong on that. I believe the Senate ought to wait. I believe it ought to monitor to see what happens to that $150 million.

If it turns out, with the discretion that the Secretary would have, even with the Mondale amendments, to be improperly spent, and to be spent simply as a way of quieting some political opposition to integration, then I really believe that it is Federal money ill spent, it won't help anybody, regrettably.

So my own strong opinion, without checking with my colleagues here, would be that it not be authorized at this point, and the Senate wait to see what happens to that first $150 million.

Senator KENNEDY. Mr. Ruiz?

Mr. RUIZ. I have some reservations, because when you say, "Wait," I am wondering just how long that is going to be.

Senator KENNEDY. Until we find out how the $150 million is spent.

Mr. RUIZ. How soon does it have to be spent?

Senator KENNEDY. We will have a chance this fall.

Mr. RUIZ. I will pass on it, sir.

Dr. CARDENAS. I also have mixed emotions on this. I am very interested in the proper utilization of this money. On the other hand, I have reservations. I have been a firm believer that a bird in the hand is worth two in the bush.

Senator KENNEDY. Even if you are not getting the bird?

Dr. CARDENAS. I think modifications can be made to the guidelines in order to allocate the funds where the need is.

Mr. RAMIREZ. I really don't know that much about the amendment, or how this money is to be spent at this time, so I cannot comment.

Senator PELL. Senator Hughes.

Senator **Hughes.** Mr. Chairman, I apologize for not being able to be here with you all morning. Senator Yarborough said he had to preside, and he was late. I have to preside in 10 minutes, so I have to leave.

I have a great deal of interest in these hearings. I want to commend you on your solid endeavors to get this moving as rapidly as we possibly can.

Not having been here, what I might ask probably has been asked. However, did I understand correctly that the Civil Rights Commission Mexican-American studies will not be available for at least 4 weeks?

Senator **Pell.** That is right. No one said specifically, but it looks as though it is going to be some time in the future.

Senator **Mondale.** It could be up to 3 months, as I understood the last part of the answer.

Senator **Hughes.** I am assuming that you men feel it is wise to go ahead without those studies.

Dr. **Cardenas.** Yes, sir. The conclusions are so overwhelming that I think that the statistics that will be brought out by the Commission will only substantiate what all of us already know.

Senator **Hughes.** We want to move as rapidly as possible. We are all agreed on that?

Mr. **Ruiz.** Absolutely.

Senator **Mondale.** Everybody agreed that to the fullest extent possible we would like to have such data as you can make available immediately, even though the conclusions are well established. Any data that you have will be a help to us in our debates.

Senator **Pell.** We are a little bit in danger of being whipsawed on this. The administration is proscrastinating all the time. We are trying to move as fast as we can. On this same bill, it took 2 weeks to get administration witnesses to come down.

As chairman of the subcommittee, I feel a little under the gun in trying to move the legislation along as fast as I can, bearing in mind due caution.

Mr. **Ruiz.** Of course if I were an attorney representing somebody in a case, I would say why don't you use the power of subpena.

Senator **Pell.** I am not a lawyer. I will ask my colleagues who are lawyers.

Senator **Hughes.** Mr. Chairman, rather than take up the time of the committee with questions which have perhaps already been answered, I want to express my appreciation to these gentlemen for being here and lending us assistance on this legislation.

Senator **Pell.** Thank you.

I can assure my colleagues and the witnesses that we will write a joint letter requesting the information that we are seeking. We will do our best.

I thank you very much.

Senator **Mondale.** In listening to the testimony, it seems to me you are making five points, perhaps some others.

No. 1, this legislation should be changed so that there are funds earmarked for ethnic minorities. We must be sure this is a balanced national program to achieve integration across the board.

No. 2, that you would like to see money included for legal fees and costs generated by private lawsuits to enforce the Constitution.

No. 3, delete the double counting standard which rewards recalcitrants and in effect almost completely eliminates any hope for Mexican-American or Spanish-American children.

No. 4, include safeguards against discrimination within schools as well as school districts, and include a provision requiring community participation in development of these plans.

Mr. REYNOSO. I want to add one other.

I think an important point is that somehow the discretion of HEW has to be cut down in such a way that they are forced to react to decent plans to desegregate, and not wait only for the initiative of HEW.

It is my understanding right now, for example, a maximum of perhaps 10 districts that have Mexican-Americans have undergone some type of preinvestigation by HEW.

This is emergency legislation. The time can come and go, and under the criteria set down here, and the procedure set down, even if it is stated to be a national program, just a very few Mexican-American districts will benefit.

So in the bill we have to build in a way whereby more Mexican-American districts can come in, so that they can benefit from the other things that the Senator just listed.

Senator PELL. Thank you very much. We have enjoyed this hearing. I hope benefit will come from it.

Mr. REYNOSO. Thank you.

(The following information was supplied for the record:)

UNITED STATES SENATE,
Washington, D.C., May 25, 1970.

Rev. THEODORE M. HESBURGH, C.S.C.,
Chairman, Commission on Civil Rights,
Washington, D.C.

DEAR FATHER HESBURGH: I was delighted to see the impressive study by the U.S. Civil Rights Commission detailing the discrimination against Mexican Americans that exists in the Southwest. The report's recommendations for legislative action were particularly valuable.

The study holds considerable interest to the State of Massachusetts where there has been a substantial increase in the past decade in the number of Puerto Rican residents. All institutions have been exceedingly slow to respond to the special needs of this new constituency. At the same time, questions have been raised whether the Puerto Rican community is being discriminated against in the allotment of federal funds and programs in the areas of education, housing and employment.

I understand that the Commission has included in its budget statements to the Congress a proposed study of denials of equal protection of the laws in the administration of justice affecting Puerto Ricans in the Northeast. I would appreciate learning of the status of that investigation and whether it includes the areas of education, housing, employment and political participation.

Hopefully, the inquiry would furnish the same basis for legislative recommendations contained in the study of discrimination against Mexican Americans in the Southwest.

I would be pleased to discuss this matter further with you, and I'm sorry I missed you last week. Until we can meet, best wishes, and my very warm regards.

Sincerely,

EDWARD M. KENNEDY.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., June 6, 1970.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: Father Hesburgh has asked me to respond to your letter of May 25, 1970, and to thank you for your regards and your kind words about our recent report "Mexican Americans and the Administration of Justice in the Southwest."

In your letter, you also asked to be informed of the status of a proposed Commission study of denials of equal protection of the laws in the administration of justice affecting Puerto Ricans in the Northeast and whether this study includes the areas of education, housing, employment and political participation. The Commission has been concerned and interested for some time in expanding its studies to include problems of the Puerto Rican community. In our request for appropriations for fiscal year 1970 we include plans to extend the Mexican American administration of justice study to include Puerto Ricans. Because of our extremely limited budget we have been able to undertake only preliminary steps to development of a Puerto Rican project during fiscal year 1970. In our appropriations request for fiscal year 1971 we have reaffirmed our commitment to a Puerto Rican project.

The present status of our Puerto Rican program is as follows:

1. There has been a special effort to include Puerto Ricans among State Advisory Committee members. The efforts have been successful in Massachusetts, Connecticut and New York.
2. On April 27, the Massachusetts State Advisory Committee held a closed meeting in Springfield on the extent of Puerto Rican participation in community action programs. This meeting resulted from an earlier one held in Boston in the fall of 1969 at which grievances from Puerto Ricans were heard.
3. On April 10, the Delaware State Advisory Committee held an open meeting on police-community relations in Wilmington. This meeting dealt with a number of issues, including relations between the city police and the Puerto Rican community.
4. On May 17, the Connecticut State Advisory Committee sponsored a conference on bilingual education in Bridgeport.
5. The Commission staff has made preliminary field surveys in cooperation with our Northeast Field Office to determine the feasibility of undertaking studies of denials of equal protection in the administration of justice and in education affecting Puerto Ricans.

We also have added two Puerto Rican staff members to the Commission, in addition to eight Mexican American professional staff members.

Our plans, however, have been delayed by our severe financial crisis of which you are well aware. As you know, our authorization for appropriations, largely through your helpful efforts, recently has been increased by $750,000 by the Senate Committee on the Judiciary. This amount will permit some small increase in the level of Commission activities. Although the Committee voted on this legislation (S. 2455) on May 12, it has yet to be reported to the Senate and remains to be acted on by the House. In addition it will be necessary for Congressional action to be taken to increase our appropriation. As a result, we expect that the first phase of our Puerto Rican program will consist of additional State Advisory Committee factfinding meetings and reports to the Commission. In the past this procedure has led to highly satisfactory results. I believe that the same will be true in the Northeast where the Commission is fortunate in having a number of outstanding State Advisory Committees, in particular the Massachusetts State Advisory Committee, chaired by Father Drinan.

I wish to assure you that the Commission fully intends to issue reports on Puerto Rican problems. I will keep you informed as events develop. I also would like to take this opportunity to thank you for your effective assistance in the Subcommittee on Constitutional Rights and the Judiciary Committee in obtaining favorable action on our authorization request.

Sincerely,

HOWARD A. GLICKSTEIN,
Staff Director.

UNITED STATES COMMISSION ON CIVIL RIGHTS

DATE: June 4, 1970

Preliminary Staff Analysis
Mexican American Education Study

Introduction

This paper presents a brief summary of the preliminary staff analysis of a comprehensive survey of the educational status of Mexican Americans in the Southwest. For the most part, the information was gathered in Spring 1969 through two questionnaires. One was mailed to a representative sample of 538 districts in the Southwest with at least 300 pupils and an enrollment which was at least 10 percent Mexican American; 532 districts (98.9 percent) returned the questionnaires. The second questionnaire went to 1,166 elementary and secondary schools within the districts sampled; approximately 95 percent of the schools returned questionnaires.

A supplementary source of information was the Fall 1968 Title VI Survey of the Department of Health, Education, and Welfare.

The questionnaires were designed to probe two broad areas. One was the practices and conditions found in the districts and schools with regard to the following items:

Socio-economic background of pupils
Staffing patterns
Facilities

Special Courses for Mexican Americans
No Spanish Rule
Tracking policies
Finances
In Service Training

The other area was the outcomes of education for the students by ethnic group. The outcomes measured were:

Attendance
Reading level
Highest educational level attained
Participation in extracurricular activities
Placement in groups or tracks
Subject matter and grade repetitions
Suspensions

Some Observations on the Status of Education for Mexican Americans

1. A substantial number of schools are still attempting to motivate Mexican American students to learn English by means of the negative practice of suppressing the use of the students' native language. The "No Spanish Rule" with a variety of sanctions is found in every state of the Southwest.
2. School districts make few efforts to institute bilingual education and English as a Second Language courses (ESL) for either students or teachers.
3. Ethnic isolation of Mexican American students is substantial in every state of the Southwest. In the region as a whole about 45 percent of Mexican American pupils are in predominantly (50 percent or more) Mexican American schools. Isolation is most severe in Texas where 40 percent of Mexican

American youth are in schools that are 80-100 percent Mexican American. The extent of isolation is greater for Mexican American educators than for students. Fifty-five percent of the nearly 12,000 Mexican American teachers in the Southwest are in schools which are 50 percent or more Mexican American.

4. Teachers of twelfth grade Mexican American students in the Southwest report that almost two out of every three of these students (63 percent) are reading below grade level. This rate is almost twice as high as the deficiency rate for Anglo pupils.
5. By grade 4, the proportion of Mexican American youngsters who have left school is higher than the proportion of Anglos who are dropouts by the 12th grade. By grade eight, 23 percent of Mexican American youth are no longer enrolled in school. Only about half of all Mexican American pupils ever graduate from high school.

Spanish-Speaking in the Schools

For more than 300 years the principal language of daily communication in the Southwest was Spanish. Following the acquisition of this territory by the United States, the population balance shifted from Mexican to Anglo, the official language became English, and the speaking of Spanish in schools and elsewhere was at the very least scorned and, in some cases, banned. Three States (Arizona, Colorado and Texas) prohibited the teaching of public school classes in any language other than English. Until 1969 the Texas prohibition was often interpreted in such a way as to prohibit the use of Spanish anywhere on school grounds, subject to penalty. Principals and teachers instituted a variety of punishments, including spanking, to discourage the speaking of Spanish.

Despite these stringent measures, a high proportion of Mexican American youngsters still enter the public schools of the Southwest from homes where Spanish is generally spoken. According to respondents to the Commission's survey in Spring 1969, almost 50 percent of all Mexican Americans in first grade do not speak English as well as the average Anglo first-grader. Yet the language of instruction is English, with few efforts made to aid the transition from the child's other tongue. The result for many youngsters is academic failure and unfavorable psychological consequences.

Today there are no laws remaining in any of the States which forbid the speaking of Spanish in schools. Most districts have abandoned their official "no Spanish rules." Less than 3 percent of the districts replied that they had a written school board policy discouraging the use of Spanish by Mexican American pupils. However, 15 percent of the schools which responded stated that they discouraged the speaking of Spanish in the classroom. Clearly, although few districts still officially sanction the "no Spanish rule," some schools within these districts have taken it upon themselves to formulate their own practices regarding language.

The Commission found that the most frequently used techniques for discouraging the use of Spanish were:

Suggesting that the staff correct Spanish speakers	48 percent
Requiring that the staff correct Spanish speakers	12 percent
Encouraging English	10 percent
Advising pupils of the economic advantages of speaking English	9 percent
Encouraging other pupils to correct Spanish speakers	7 percent
Punishing persistent Spanish speakers	3 percent

Special Programs and Teacher Training

In the five Southwestern States there are about 5,900 schools located in districts in which 10 percent or more of the enrollment is Mexican American. Eighty percent (1.1 million) of all Mexican American pupils are in these districts. It is estimated that less than 400 of these schools (6.5 percent) have bilingual education programs and less than 1,200 (19.6 percent) have programs in English as a Second Language. Of the 1.1 million Mexican American youth attending these public schools in the Southwest, Commission data indicate that not more than 29,000 of these pupils are enrolled in bilingual education and 64,000 in ESL classes.

Furthermore, of the approximately 1,200 teachers of bilingual education in these schools, almost one-fourth have had no special preparation for their assignments. Of the nearly 3,000 teachers of

English as a Second Language, close to one-third (1,000) have had no special training.

In contrast to bilingual education and ESL, far more attention is given to remedial reading problems. More than half (58.2 percent) of the 5,900 schools have remedial reading classes. These classes enroll almost 116,000 Mexican American youngsters (over 10 percent). Thus, most of the effort is being placed on seeking to remedy reading problems rather than on avoiding the problems in the first instance.

At the present time, there are only about 2,100 persons in the districts surveyed who are receiving special training in the teaching of bilingual education, 4,500 are being trained as teachers of ESL classes, and 6,500 are being trained as teachers of remedial reading. Almost twice as many hours are being spent annually for training teachers of remedial reading (471,328 hours) than are spent for bilingual education and English as a Second Language combined (243,756 hours).

Achievement of Mexican Americans

Almost from the first day they enter school and are required to receive instruction in a language not their own, Mexican American pupils achieve at a lower level on the average than do Anglo youngsters. Furthermore, they are more likely than Anglos to become discouraged and to leave school--often at surprisingly early ages.

Attrition Rates

Using fairly conservative estimating procedures, Commission staff estimate that today at least 18 percent of Mexican American youngsters in the Southwest do not go beyond the 4th grade in school. By grade 8, close to one-quarter (23 percent) of Mexican Americans of school age are no longer enrolled in school. And by grade 12, the attrition rate is more than half (52-55 percent).

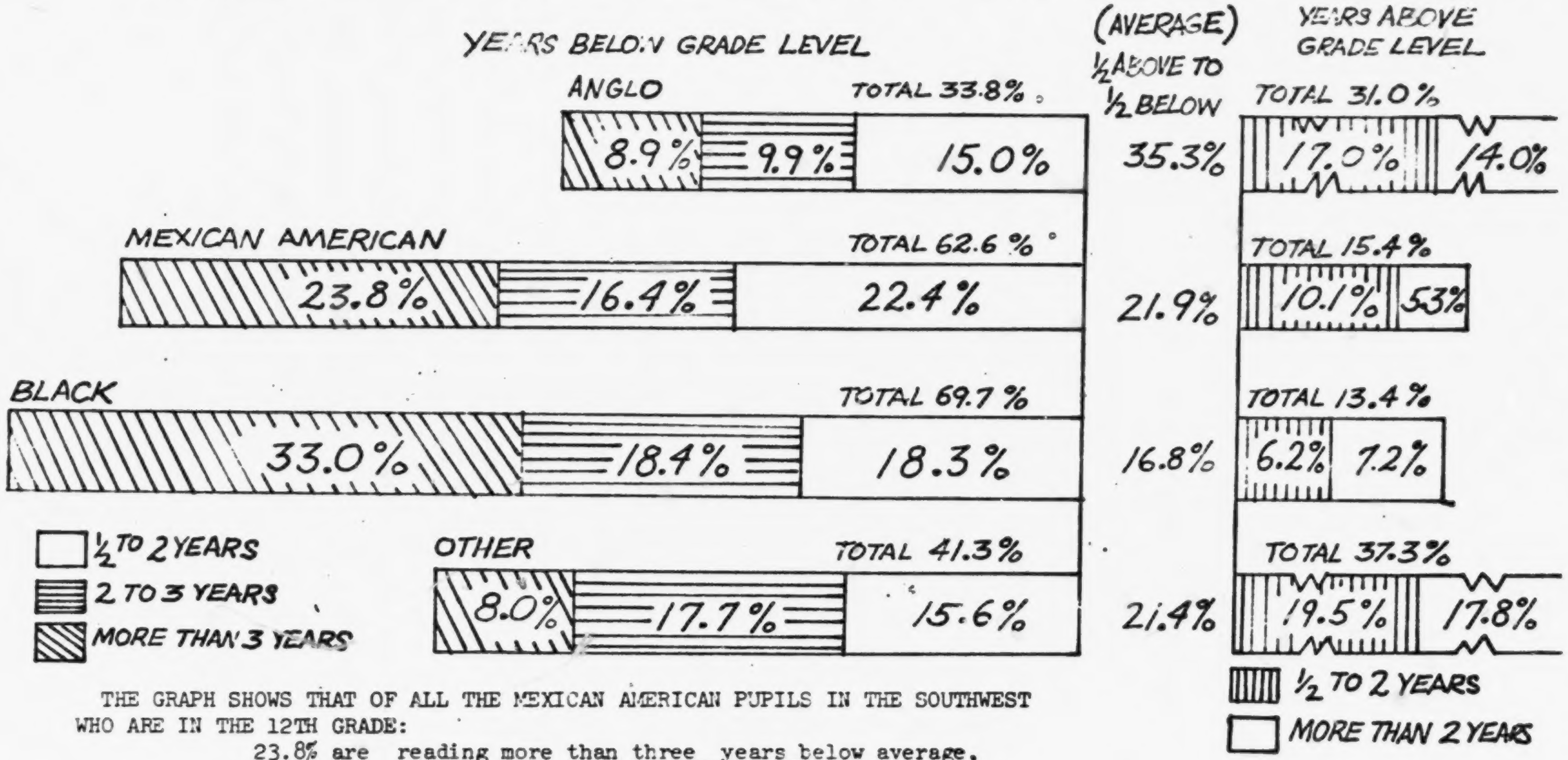
Reading Achievement at the 12th Grade

Even among those Mexican American pupils who remain in school, achievement levels are frequently low. At the 12th grade, nearly two-thirds (62.6 percent) of all Mexican Americans are reported to be reading below grade level. Nearly one-fourth (23.8 percent) are more than three years below their grade in reading ability.

In contrast, two-thirds of all 12th grade Anglo youngsters are reading at or above grade level.

Ethnic Isolation of Mexican American Students

Mexican American students have never been segregated by statute into separate schools or school districts in any of the five States of the Southwest. However, they have been subjected to de jure segregation in the past by the action of school boards whose stated policy was to separate Mexican American pupils. Although no overt policies of segregation remain today, Mexican Americans are still substantially underrepresented in some schools and districts, overrepresented in others. In addition to deliberate design of school authorities, this has occurred



WEIGHTED TOTAL OF FIVE SOUTHWESTERN STATES READING LEVEL - GRADE TWELVE

THE GRAPH SHOWS THAT OF ALL THE MEXICAN AMERICAN PUPILS IN THE SOUTHWEST WHO ARE IN THE 12TH GRADE:

23.8% are reading more than three years below average,
16.4% are reading between 2 and 3 years below average and
22.4% are reading between 1/2 and 2 years below average.

THESE FIGURES ARE MORE SIGNIFICANT WHEN ONE CONSIDERS THAT ONLY 50 **PERCENT** OF ALL MEXICAN AMERICAN STUDENTS EVER GET TO THE 12TH GRADE. THE READING LEVELS, THEREFORE, REFER TO THE MEXICAN AMERICAN STUDENTS **WHO ONE MIGHT THINK ARE BEST** PREPARED ACADEMICALLY.

for such reasons as historical patterns of settlement and the concentration of ethnic groups and economic classes by neighborhood.

Location by States

Today, there are about 1.4 million Mexican American youngsters in the public schools of the Southwest. In the region as a whole, they represent 17 percent of the total enrollment and 60 percent of the non-Anglo enrollment. More than 80 percent of Mexican American youth attend schools in California and Texas. Nearly one-half are in California alone. However, Mexican Americans constitute a larger proportion of the enrollment in New Mexico than in any of the other four Southwestern States.

State	Mexican Americans as Percent of Total Public School Enrollment
Arizona	19.6 percent
California	14.4 percent
Colorado	13.7 percent
New Mexico	38.0 percent
Texas	20.1 percent

Isolation by School

Although they make up only 17 percent of total public school enrollment, a substantial proportion of Mexican American youth attend schools in which they are in a majority. About 45 percent are assigned to schools in which they make up 50 percent or more of the enrollment. Slightly more than 20 percent are in schools in which they comprise 80 percent or more of the total enrollment.

The extent of ethnic isolation differs greatly among the five States. Segregation is most severe in Texas, where some two-thirds of the Mexican American students are in majority Mexican American schools and 40 percent are in schools that are 80-100 percent Mexican American. Ethnic isolation is least severe in California. Only about 28 percent of Mexican American pupils in this State are in majority Mexican American schools. Less than 10 percent are in schools that are 80-100 percent Mexican American.

Mexican American Students in Predominantly Mexican American Schools by State

	Mexican American Pupils (total)	Mexican American Pupils in Schools With 50-100 Percent Mexican American Pupils		Mexican American Pupils in Schools with 80-100 percent Mexican American Pupils	
	Number	Number	Percent	Number	Percent
Arizona	71,748	29,361	40.9	7,551	10.5
California	646,282	178,266	27.6	64,302	9.9
Colorado	71,348	23,262	32.6	4,098	5.7
New Mexico	102,994	68,440	66.5	21,785	21.2
Texas	505,214	335,328	66.4	201,613	40.0
Southwest	1,397,586	634,659	45.5	299,613	21.5

Isolation by District

About 30 percent of all Mexican American students attend schools in districts with 50 percent or more Mexican American enrollment overall. Isolation by district is most pronounced in Texas where nearly 60 percent of Mexican American pupils are in majority Mexican American districts. In New Mexico more than one-third of all pupils of this ethnic group are in districts in which they form a majority of the enrollment.

Ethnic Isolation of Mexican American Teachers

There are less than 12,000 Mexican American teachers in the Southwest. They make up less than 4 percent of all teachers in the region. Proportionately more Mexican American teachers than pupils are assigned to majority Mexican American school . Fifty-five percent of them are assigned to schools which have a predominantly Mexican American enrollment. One-third are in schools that are 80-100 percent Mexican American.

Furthermore, a higher percentage of Mexican American teachers at the elementary level are assigned to predominantly Mexican American schools than are those teaching in intermediate and secondary schools. Overall, 67.3 percent of all Mexican American teachers at the elementary level are in predominantly Mexican American schools. 45 percent at the intermediate level, and 40.8 percent at the secondary level.

Ethnic concentration of teachers is most acute in Texas and least severe in California. More than 80 percent of the approximately 5,100 Mexican American teachers in Texas are assigned to majority Mexican American schools and more than 60 percent of this ethnic group's teachers are in schools that are 80-100 percent Mexican American.

In California only 17.5 percent of about 3,800 Mexican American teachers are in schools in which the enrollment is predominantly Mexican American. Nearly two-thirds (66 percent) are in schools where Mexican American pupils constitute 25 percent or less of the enrollment.

Educational Finances, Teacher Qualifications and School Facilities

Although the Commission gathered comprehensive information on these three items in its March 1969 survey, these data are still being analyzed and are not yet available for reporting. However, in Fall 1968, the Commission collected similar data on nine independent school districts in the metropolitan area of San Antonio, Texas. The following material is based on the study of these nine districts.

Educational Finance

The following tabulation illustrates the substantial differences in per pupil expenditures in the 1967/1968 school year among the nine districts.

Per Pupil Expenditures (1967/1968)

Name of School District	Percent Mexican American Enrollment of Total Enrollment	Expenditure Per Pupil (Revenue from All Sources)
North East	7.4	$745.07
Alamo Heights	14.1	653.17
East Central	24.8	604.22
South San Antonio	59.5	592.87
Northside	16.1	578.13
Southwest	38.8	543.00
Harlandale	61.7	465.53
Edgewood	89.4	464.54
San Antonio	58.2	425.31

In general, the predominantly Anglo districts spend far more per pupil than do those with substantial Mexican American enrollments. In one instance, an almost exclusively Anglo district (Northeast) spends almost $320.00 more per pupil than the predominantly Mexican American San Antonio Independent School District.

Teacher Qualifications and Pupil Teacher Ratios

The level of academic attainment of the teaching staffs in the predominantly Mexican American districts is generally lower than that of the Anglo districts. For example, nearly 20 percent of teachers in the Edgewood District (89 percent Mexican American) have not completed college. There is only one non-degree teacher (0.3 percent) in the largely Anglo district of Alamo Heights.

Furthermore, the average pupil-teacher ratios in heavily Mexican American districts are substantially higher than those in Anglo districts.

School District	Percent Mexican American Enrollment of Total Enrollment	Teachers Without College Degree		Average Pupil-Teacher Ratios
		Number	Percent Of Total	
Edgewood	89.4	160	19.7	28.1
East Central	28.8	5	4.8	27.1
Southwest	38.8	11	11.1	26.1
Harlandale	61.7	40	6.0	26.1
South San Antonio	59.5	12	4.1	23.1
San Antonio	58.2	30	0.9	26.1
Northside	16.1	5	0.7	24.1
Alamo Heights	14.1	1	0.3	21.1
North East	7.4	8	0.7	23.1

School Facilities

As part of the San Antonio pilot study, differences in facilities were compared among individual schools within one district. In terms of median age of school buildings a strong relationship exists between the year of construction of a given school in the San Antonio Independent School District and the ethnic composition of its enrollment. On the average, schools with enrollments over 80 percent Mexican American are a quarter of a century older than those whose student bodies are predominantly Anglo. Four predominantly Mexican American elementary schools predate the twentieth century, the oldest being 90 years old.

The lower the proportion of Mexican Americans in the student enrollment of a school, the more recent the date of construction of the school is likely to be, whether the remainder of the student body is primarily Anglo or black. At the elementary level, the typical predominantly Mexican American school predates the average black school by 19 years, and the average Anglo school by 31 years. Generally, Mexican American schools are also in need of more repairs than are the Anglo or black schools.

In San Antonio schools there are on the average almost twice as many children per acre on school sites accommodating enrollments over 80 percent Mexican American as on school sites with a predominantly Anglo student body.

STATEMENT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS CONCERNING THE "STATEMENT BY THE PRESIDENT ON ELEMENTARY AND SECONDARY SCHOOL DESEGREGATION"

On March 24, 1970, the President issued an important civil rights statement. The President's statement is comprehensive and thoughtful. He has made clear his strong support for the constitutional principle of the 1954 Supreme Court decision in Brown v. Board of Education: "We are not backing away. The Constitutional mandate will be enforced."

The President also has given his view of the contents of that constitutional mandate. "Deliberate racial segregation of pupils by official action," the President said, "is unlawful, wherever it exists." He pointed out emphatically that "it must be eliminated 'root and branch'--and it must be eliminated at once." Further, the President stated that "segregation of teachers must be eliminated" and ordered that steps be taken to assure against discrimination in the quality of facilities or the quality of education delivered to school children within individual school districts.

As the President recognizes, however, the issues are more complex than merely ending current practices of deliberate public school segregation and discrimination, and their implications for the future of the country are far-reaching. While many of the problems are common to nearly all minority groups in all parts of the country, others frequently are unique to particular sections of the country or to particular minority groups. Problems of segregation and inadequate school facilities, for example, cut across racial or ethnic lines and exist in all regions. Black children in the rural South, however, experience educational deprivations different in kind from those of children who live in northern ghettos. By the same token, Mexican American and other Spanish-speaking children experience unique hardships when they come from homes where their first language is Spanish but enter an educational environment where only English is permitted, and as a result are shunted automatically into lower ability groups and subjected to curricular discrimination.

The President addressed himself to many of the more complex issues that have been troubling the Nation--issues such as what can be done about so-called de facto school segregation, what are the most effective and sensible means of enforcing school desegregation requirements, how much of a social burden can the schools reasonably be expected to bear, how important is integration to the achievement of minority group children, how effective can busing be as a means of carrying out school desegregation, how important is adherence to the neighborhood school principle, and what kinds of resources should the Federal Government make available to local communities to achieve the goal of equal educational opportunity?

These are issues of critical importance deserving of the highest level of consideration and discussion. In the course of its history, the Commission has paid continuing attention to many of these issues. We are committed to the purpose for which this Commission was created: To act as an objective, bipartisan factfinding agency and to continually apprise the President, the Congress, and the Nation of the facts as we see them. The Commission believes that the experience and information we have gathered over the years concerning the issues discussed in the President's statement provide a sound basis for analysis and comment that can contribute to their clarification and be of help to educators, other public officials, and concerned Americans generally. It is in this spirit that we speak out now.

De Jure v. De Facto

The President draws a sharp distinction between de jure and de facto school desegregation, contending that under the former there is a positive duty to end it, while under the latter, "school authorities are not Constitutionally required to take any positive steps to correct the imbalance." This statement represents a strict interpretation of existing Supreme Court decisions.

It can be argued, however, that the Supreme Court's decision in Brown warrants a broader interpretation. For one thing, while the holding of the supreme Court in the Brown case was limited to legally compelled or sanctioned segregation, the Court's concern extended as well to segregation resulting from factors other than legal compulsion. The Supreme Court quoted with approval a lower court finding that "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law. . ." (Emphasis added), and concluded: "Separate educational facilities are inherently unequal. . ."

Thus the Court expressly recognized the inherent inequality of all segregation noting only that the sanction of law gave it greater impact. In a sense, therefore, the President's sharp distinction between de jure and de facto segregation tends to blunt what many think is a crucial thrust of Brown.

The Commission, moreover, in the course of its investigations, has found numerous examples--North and South--which suggest that it is not adequate to describe school segregation as purely de facto--that in many cases, school segregation that appears to result solely from accidental housing patterns turns out, upon closer examination, to result in large part from decisions by school and other public officials.

For example, decisions on school boundary lines have been made with the purpose and effect of isolating minority group members in their own separate and unequal schools. Sites for new schools, even recently, have been strategically selected so as to assure against racially integrated student bodies. The size of schools has been determined with an eye toward maintaining racial separation. As the President recognizes, conduct of this type is illegal. Instances of purposeful school segregation have been found in surprising places, in the North as well as the South. The school systems of New Rochelle, New York; South Holland, Illinois; Pasadena and Los Angeles, California; and Pontiac, Michigan, are among those which have been found by the courts to have practiced deliberate school segregation in violation of the Fourteenth Amendment. There is no doubt that there are many more instances of school segregation resulting from conscious decisions of school officials than the relative handful that have come to the attention of the courts.

It also should be understood that legally compelled or sanctioned school segregation is not a phenomenon unique to the South. In many northern and western states, the current pattern of racial separation of students is a legacy of an era when laws and policies explicitly authorized segregation by race. States such as Indiana, New Mexico and Wyoming maintained separate-but-equal laws beyond the mid 1940s. In other northern states, such as Ohio and New Jersey, cities and counties persisted in maintaining separate schools for black students well into the 1950s.

Even in those instances where school segregation is a result of housing patterns with no apparent complicity of school officials, government at all levels--local, State, or Federal--invariably is heavily implicated. Historically, racial zoning ordinances imposed by local law were a formidable factor in creating and maintaining racially exclusive neighborhoods. Although such ordinances were held unconstitutional as early as 1917, some communities continued to enforce them, even as late as the 1950s.

Judicial enforcement by State courts of racially restrictive covenants has been another important factor. Although these covenants were private agreements to exclude members of designated minority groups, the fact that they were enforceable by the courts gave them maximum effectiveness. Not until 1948 was the judicial enforcement of such covenants held unconstitutional, and not until 1953 was their enforcement by way of money damages held unlawful. Racially restrictive covenants no longer are judicially enforceable, but they still appear in deeds and the residential patterns they helped to create still persist.

7

Various exercises of local governmental authority, such as decisions on building permits, the location of sewer and water facilities, building inspection standards, zoning and land use requirements, and the power of eminent domain have been used to exclude minority group members from designated neighborhoods and even from entire communities.

The Federal Government, principally through its public housing and FHA mortgage insurance programs, has been all too often a willing partner in the creation and perpetuation of racially segregated neighborhoods, even to the point of insisting upon them. Until the late 1940s, for example, FHA insisted on racially restrictive covenants to insure against integrated housing developments. Until 1962 when the Executive Order on Equal Opportunity in Housing was issued, the agency continued willingly to do business with discriminatory builders and developers. The Public Housing Administration permitted its funds to be used for the creation and perpetuation of segregated housing projects well after the courts had made it clear that such practices were in violation of the Constitution. Other Federal programs, such as the highway and urban renewal programs, which involve massive displacement and relocation, also have had the effect of intensifying residential segregation.

The point we are making is that the current situation we face, in which most minority group children attend school in isolation from children of the majority group, is not accidental or purely de facto. In many cases, it has resulted in whole or in substantial part from an accumulation of governmental actions. Thus the categorical distinction between de jure and de facto segregation is not as clear-cut as it would appear. Upon closer examination, there is probably little legal substance to the concept of de facto school segregation. Further, in the Commission's view, the Government has a moral as well as legal responsibility to undo the segregation it has helped to create and maintain. There is no statute of limitations by which government in its many forms can be exonerated from its past misdeeds or relieved of its current obligations.

The Commission believes that the necessary course of action is to make available to the Department of Justice and the Department of Health, Education, and Welfare the resources necessary to determine on a nationwide basis those cases which appear on the surface to involve de facto segregation but which in reality involve de jure school segregation, and then to take steps to correct the situation. We note that the President, in his budget request for Fiscal Year 1971, has asked for substantial increases in resources for civil rights enforcement in both departments--56 additional positions for the Civil Rights Division of the Department of Justice and 144 additional positions for the Office for Civil Rights in the Department of Health, Education, and Welfare. It is important that the President's request be honored. It also is important that the attention of these two departments be directed specifically to the problem of apparent de facto segregation that may, in fact, have been consciously created and maintained de jure. We believe that to accept without investigation the notion of widespread fortuitous and ingenuous school segregation and to determine policy on that basis would be a serious mistake.

Further, there is a large arsenal of weapons, in the form of nondiscrimination laws and low- and moderate-income housing programs, available to combat housing segregation and remove it as a cause of school segregation. As this Commission also recently pointed out in its report on "Federal Installations and Equal Housing Opportunity," the leverage of the substantial economic benefits generated by Federal installations can be used effectively to promote housing desegregation.

Another important way to promote housing desegregation is to provide people with the economic wherewithal necessary to expand their choice of housing. The President's Family Assistance and Manpower Training proposals, as well as the Administration's endorsement of the "Philadelphia Plan," represent forward moving efforts to enable the poor, a disproportionately high number of whom are minority group members, to join the Nation's economic mainstream and expand their choice in housing and other aspects of life through adequate income and job stability.

Enforcement of School Desegregation

The President's statement was largely silent concerning the means that will be used to bring about an end to dual school systems. Experience in the 16 years since the Brown decision provides many lessons on what kind of enforcement works and what kind does not. During the first ten years following Brown, when litigation was the sole enforcement mechanism, progress in carrying out the Supreme Court's mandate was frustratingly slow--three percent desegregation in 10 years. Since the enactment of Title VI of the Civil Rights Act of 1964, however, with its provision for administrative enforcement, progress has accelerated enormously--30 to 40 percent desegregation in the last five years. In a July 3, 1969, statement the Attorney General and the Secretary of Health, Education, and Welfare indicated that the Government was deemphasizing the use of administrative enforcement under Title VI in favor of a return to litigation. This, despite the evidence of the practical utility of Title VI as an enforcement mechanism. The fact that the President made no reference to the means to be used raises the fear that litigation will, in fact, continue to be substituted for administrative enforcement. In its September 1969 report on "Federal Enforcement of School Desegregation," the Commission characterized the Administration's reliance on litigation as "a major retreat in the struggle to achieve meaningful school desegregation." The Commission believes it is important that a clear statement of policy be made by the President to allay these fears.

The President made plain in his statement, however, two other principles which apparently will guide his Administration in carrying out the Supreme Court's mandate: local discretion and reliance on good faith of local school administrators. Again, on the basis of the experience of the past 16 years, the Commission believes that neither is adequate assurance. The progress that has been made in promoting school desegregation in the South has not often resulted from local initiative, alone, but more frequently from persistent Federal pressure, joined with local initiative. Experience also has demonstrated that results alone--and not good faith--are the only true measure of compliance with the Supreme Court's mandate.

Burden on the Schools

Another area that warrants further discussion is the suggestion that we are asking too much of our schools. The President said: "They have been expected not only to educate, but also to accomplish a social transformation." The Commission believes this is true--that much is being asked of our schools, that much always has been asked of them. The important point, however, is that they have delivered. During the great waves of immigration that brought millions of oppressed people to this land of promise, it was the schools that we relied upon to educate the children of these immigrant families and to integrate them into American society. They did not fail us then.

But they are failing today. The children of the Nation's ghettos and barrios are not receiving the quality of education afforded to more affluent majority group children, nor are they being enabled to join the Nation's social and economic mainstream. Above all, they are not being integrated into American society, but are becoming alienated from it. To be sure, the problems facing the schools may be more difficult than those they faced in earlier days when they succeeded so well. But these problems cannot be viewed as insoluble, nor can we relieve our schools of the burden, heavy as it may be, of being the chief instrument by which they will be resolved. For the schools occupy a special place in American society. As the President pointed out:

> "The school stands in a unique relationship to the community, to the family, and to the individual student. It is a focal point of community life. It has a powerful impact on the future of all who attend. It is a place not only of learning, but also of living--where a child's friendships center, where he learns to measure himself against others, to share, to compete, to cooperate--and it is the one institution above all others with which the parent shares his child."

Public schools must again be asked to play their traditional role as "the balance wheel of the social machinery." It will not do to insist that we are placing too heavy a burden on the schools. It is a burden that they always have accepted and they must accept it now. It should be a national priority of the highest order to provide our schools with the necessary resources--adequate facilities, better teacher training, and the like--to bear this burden. It is for this reason that we welcome the President's allocation of one and a half billion dollars. There are urgent needs for all of this and more, plus a clear pinpointing of the precise educational priorities for school improvement throughout the country.

There simply is no other institution in the country so equipped to do the job. If the public schools fail, the social, economic, and racial divisions that now exist will grow even wider. It would be even worse, however, if the schools do not even try.

Importance of School Integration

In his March 3, 1970, message on "Education Reform," the President made the following statement: "Quality is what education is all about; desegregation is vital to that quality." That statement did not represent a suggestion of a new direction in national policy, but rather, an accurate and succinct description of one of the cornerstones of established policy.

It has been settled that desegregation is fundamental to the achievment of equal educational opportunity. All three branches of the Federal Government have spoken with one firm resolve on this matter and the Nation has committed itself to achieving the goal of quality integrated education for all of our children. Studies have been made, such as the Coleman Report, the Commission's own report on "Racial Isolation in the Public Schools," and a recent study of the New York State Board of Regents, which indicate that racial, as well as social class, integration has a positive effect on the achievement of school children. These studies are useful in contributing to better understanding of the elements that make for quality education. They in no way question the fundamental policy of school desegregation. That policy is based on considerations as important as school achievement scores. School integration is necessary to create the understanding and sense of common purpose so vital to the Nation's future well-being. The key question now is not the relative merits of desegregation, but how to accomplish it.

It is true, as the President points out, that the adult community has failed to achieve for itself the kind of multiracial society that we are seeking to achieve in schools. The failure of the adult community, however, only highlights the necessity of insuring that our children receive the kind of training in integrated school environments that will equip them to thrive in the multiracial society they will enter. In fact, nowhere is integration more easily achieved than among children, who are born without prejudice and who accept other human beings for their human values, without automatic judgments based on race or color. If we delay this training until they enter the adult society, we will have been too late. It is in the schools where our children's attitudes and perceptions can be influenced to enable them to succeed where we, their parents, have failed.

Busing

In his statement, the President raised the issue of busing and cautioned that we must proceed with the least possible disruption to our children's education. Busing has become an emotionally charged word and the issues involved have been the subject of considerable misunderstanding. Many who oppose busing do so on the basis of certain assumptions, one of which is that riding to school disrupts a child's education and causes harm. This is a serious issue which should not be argued solely in terms of assumptions or emotion. The Commission believes that facts which it has found in the course of its investigations may contribute to clarifying the issue and sharpening the debate over it.

Busing is neither a new nor a unique technique, and its use is not limited to facilitating desegregation. For example, for decades, black and white children, alike, in the South were bused as much as 50 miles or more each day to assure perfect racial segregation. In many cases, busing was the exclusive privilege of white children--black children often were required to walk considerable distances. No complaints then were heard from whites of any harmful effects. Nor was any concern exhibited over the damage suffered by black children through their deliberate segregation. The Supreme Court in Brown described vividly the nature of the harm to which Negro children were being subjected.

> 'To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Thus the arguments that some now make about the evils of busing would appear less than ingenuous. The plain fact is that every day of every school year 18 million pupils--40 percent of the Nation's public school children--are bused to and from school, and the buses log in the aggregate more than two billion miles--nine billion passenger miles--each year. It also should be understood that the overwhelming majority of school busing has nothing to do with desegregation or achieving racial balance. The trend toward consolidation of schools, for example, particularly in rural areas, requires extensive busing. It causes no disruption to the educational routines of the children and is treated as normal and sensible.

Amid the controversy over busing, in many school systems, North and South, transportation is being used quietly and effectively as a means of bringing about desegregation. The bus rides are not long--in Berkeley, California, for example, a city of 120,000 people, the bus trip never exceeds 20 minutes--and it causes no harm. In the South, of course, the amount of busing needed to bring about desegregation frequently is considerably less than was required to maintain dual school systems. For example, at the Commission's 1968 hearing in Montgomery, Alabama, we found that black students in Selma, seeking to attend trade school, were bused some 50 miles to the nearly all-black Trenholm School in Montgomery, although the Rufus King trade school was located in Selma. Rufus King, however, was all-white.

It is a mistake to think of the problems of desegregation and the extent that busing is required to facilitate it solely in the context of the Nation's relatively few giant urban centers such as Chicago, New York, or Los Angeles. In most of our cities the techniques necessary to accomplish desegregation are relatively simple and busing creates no hardships. The experience in communities which have successfully desegregated could easily be transferred to cities of greater size.

Even in giant urban centers, progress in desegregation does not require interminable bus rides or disruption of our children's education. The President, in discussing the recent California court decision requiring desegregation of the Los Angeles school system, quoted "local leaders" as estimating that the total cost of busing will amount to 40-million dollars over the next school year. This estimate represented the contention of the defendants in that litigation. It was presented to the court for the purpose of arguing against the feasibility of desegregation in that city's school system. In fact, the court rejected this estimate as unrealistic.

In Los Angeles, as in other cities, substantial desegregation can be accomplished through relatively simple devices such as alteration of existing school attendance areas, school pairing, and the establishment of central schools. To be sure, transportation is necessary in giant urban centers as it is in smaller cities, but here too, it is false and defeatist to assume that the bus rides must be lengthy or that the education of our children will be disrupted.

In the Commission's view, the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus ride that is really important.

Neighborhood Schools

In his statement, the President emphasized the desirability of maintaining the neighborhood school principle. For several reasons, the Commission questions whether this should be one of the cornerstones upon which national educational policy rests.

For one thing, neighborhood schools do not represent the invariable principle governing school attendance that many believe. Frequently, neighborhood attendance is subordinated to other educational goals. In some cities, for example, handicapped children or academically talented students attend schools other than the one in their neighborhood.

Further, the Commission has found numerous instances of departures from neighborhood attendance policy that have had the effect of promoting racial segregation, where faithful adherence to the neighborhood school principle would have assured integrated student bodies. In Cleveland, Ohio and San Francisco, California, for example, optional zones were created to permit white students who otherwise would have attended racially integrated schools to choose instead nearly all-white schools out of their neighborhood. Transfer plans, ostensibly instituted to relieve overcrowding, also have had the effect of promoting racial separation.

There is, in fact, a good deal of inconsistency and hypocrisy that all too often surround the lip service paid to the neighborhood school principle. Courts,as well as school officials, have had little difficulty in dismissing its importance for the purpose of maintaining segregation. In Cincinnati in 1876, for example, black children who had to walk four miles each way to attend a black school brought suit to enter the much nearer white school. The court refused and said: "Children cannot cluster around their schools like they do around their parish church." Several years ago, then Chief Judge Tuttle of the U.S. Court of Appeals for the Fifth Circuit, in a case involving the Mobile, Alabama, school system, made some observations on this point:

> "Both in testimony and in the briefs, much is said by the appellees about the virtues of 'neighborhood schools.' Of course, in the brief of the Board of Education, the word 'neighborhood' doesn't mean what it usually means. When spoken of as a means to require Negro children to continue to attend a Negro school

> in the vicinity of their homes, it is spoken of as a 'neighborhood' school plan. When the plan permits a white child to leave his Negro 'neighborhood' to attend a white school in another 'neighborhood' it becomes apparent that the 'neighborhood' is something else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white people. So far as has come to the attention of this court, no board of education has yet suggested that every child be required to attend his 'neighborhood school' if the neighborhood school is a Negro school. Every Board of Education has claimed the right to assign every white child to a school other than the neighborhood school under such circumstances. And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the 'inherently unequal' education of 'separate educational facilities,' the answer too often is that the children should attend their 'neighborhood school.' So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors, such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose 'area' school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening 'areas' away."

There also is some question whether the narrow attendance areas served by neighborhood schools truly represent the 'neighborhood' as we currently understand that term. In fact, the meaning of neighborhoods has changed over the years. Recent developments in the pattern of urban life--rapid population shifts and the growing distances city residents travel for recreation, business, and shopping--have diffused traditional neighborhood patterns. They no longer are the self-contained, cohesive communities they may once have been. In short, it is doubtful that adherence to the neighborhood school principle is required by considerations of close community ties in narrow geographical areas. The schools have an opportunity, by broadening the geographical areas they serve, to expand the experience of children beyond that of the restricted confines of their narrowly defined neighborhood, and establish the school as a broader "community" or "neighborhood" in which the lives of all who attend can be enriched.

If adherence to the neighborhood school principle frequently interferes with efforts to promote desegregation, there also is some question concerning its value as a means of providing quality education. The essence of the neighborhood school is a self-contained unit serving a relatively small student population. In larger units, however, economies of scale frequently make possible the offering of a broader curriculum and the provision of new and expensive equipment that are not economically possible in schools which serve small numbers of students. Many rural areas, for example, in an effort to improve the quality of education, have abandoned the tradition of small individual school houses in favor of consolidated schools serving much larger student bodies. In short, adherence to the neighborhood school principle under current conditions not only tends to interfere with efforts at desegregation, but also has little bearing on efforts to improve the quality of education and in some cases may even thwart those efforts.

The Commission believes that ideally and ultimately, resolution of the problem of school segregation lies in residential desegregation, which will remove the emotional issue of neighborhood schools from the arena of civil rights controversy. Residential desegregation can be accomplished through laws and policies designed specifically to secure an open housing market, and administered with dedication and purpose. This does not mean, however, that efforts to desegregate the schools should await the day when neighborhood desegregation has been achieved. We cannot afford to make integrated education wholly dependent upon open housing, for to do so would be to consign at least another generation of children to education in racially isolated schools.

Helping Communities to Desegregate

We have spoken of communities that have recognized the problem of school segregation and have determined to eliminate it on their own. Many of these are in the South and they have complied with judicial and administrative requirements by devising imaginative and successful plans not only for achieving physical desegregation but also for assuring quality education for all children. Some of these communities are in areas commonly thought to be among the most opposed to desegregation. For example, Pass Christian and New Albany, Mississippi, both have accomplished full desegregation and have taken steps to assure that the desegregated schools are not white schools or black schools, but schools that all children can feel a part of. As measured by white and black student participation in school activities, daily attendance rates, and achievement scores, their efforts have been successful.

Other communities, particularly in the North, while they have been under no legal compulsion to accomplish desegregation, nonetheless have sought to do the job. The President has pointed out that these school officials are free to take steps beyond the constitutional minimums to diminish racial separation.

The Commission questions, however, whether this is enough, and whether the appropriate posture of the Federal Government on this important matter should be merely a passive one. Rather, we believe it is essential that resources, in the form of financial and technical assistance, be made available to assist these communities in bringing about total and successful desegregation as rapidly as possible.

We recognize, of course, that the President has made a commitment of one and one-half billion dollars over the next two years to carry out his school policies, and we applaud this step.

There is need to clarify how this money will be used. The President specified two purposes: "Improving education in racially impacted areas, North and South, and for assisting school districts in meeting special problems incident to court-ordered desegregation."

It is not clear whether these two purposes are considered mutually exclusive--whether school districts not under court order would be eligible for assistance under this program to promote desegregation or whether the President's proposal assumes that so-called de facto segregation is with us to stay. If the latter, then the proposal may well have the effect of providing built-in financial incentives for the perpetuation of racial segregation in schools not under court order and transform an acceptance of the reality of de facto segregation into self-fulfilling prophesy. We believe again that further official clarification of this point is needed.

The President has made it clear to all that his Administration intends to carry out the Supreme Court's mandate of an immediate end to legally sanctioned dual school systems.

Much more, however, is necessary. The problems of racial isolation in the Nation's schools cannot be resolved solely through cautious adherence to a narrow construction of existing case law.

The courts, in defining the constitutional requirements relating to desegregation have informed us only of our minimum mandate, not the maximum that we are permitted to do to accomplish school desegregation. In education, as in other areas of national concern, it is the responsibility of the Congress and the Executive Branch to act beyond this minimum, using the broad authority provided under the Constitution. Thus it is not sufficient to say that local school officials who have not maintained legally compelled separate systems may desegregate their schools if they choose to. The necessity of desegregation must also be urged and the resources made available to accomplish it if our Nation is to move toward the ideal of "one Nation, under God, indivisible, with liberty and justice for all." It is this word "all," with its special connotation of equal educational opportunity for all the children in America which has inspired most of our comments. We believe that here is the central concern, the true promise of what America will be in the years ahead--one Nation, indivisible, or two Nations divided.

The Commission fears that the President's statement, particularly his sharp distinction between de jure and de facto segregation, well may have the net effect, though unintentional, of signaling a major departure from the policy of moving toward integrated schools and that open society of which he spoke so well in his statement.

Last September, in its report on "Federal Enforcement of School Desegregation," the Commission pointed out:

> "This is certainly no time for giving aid and comfort, even unintentionally, to the laggards while penalizing those who have made commendable efforts to follow the law, even while disagreeing with it. If anything, this is the time to say that time is running out on us as a Nation. In a word, what we need most at this juncture of our history is a great positive statement regarding this central and crucial national problem where once and for all our actions clearly would match the promises of our Constitution and Bill of Rights."

The Commission is aware that the problem of school segregation is one of enormous difficulty and complexity. Yet a realistic assessment of the scope and dimensions of the problem should not result in a resigned acceptance of its indefinite continuation or a defeatist conclusion that it is beyond our capacity to resolve. The Commission is convinced of the ability and will of the American people to respond affirmatively to a call to end the injustice that school segregation represents. This call requires a major investment of resources, the commitment of public and private officials on the Federal, State, and local level--indeed of all Americans--and above all, the continuing example of courageous moral leadership from the President of the United States.

Members of the Commission

Rev. Theodore M. Hesburgh, C.S.C., Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Maurice B. Mitchell
Robert S. Rankin
Manuel Ruiz

Howard A. Glickstein, Staff Director

Senator **Pell**. Our next and final witness, is Mrs. Maria Reyes, director of the migrant education program, Commonwealth of Massachusetts.

Senator Kennedy suggested she come at this time, and he will introduce her.

I am particularly interested in your testimony because we have many foreign language speaking people in my State, Portuguese, French, and Italian. Actually, the State in the United States with the highest percentage of foreign-born is my own State of Rhode Island.

Senator **Kennedy**. It is a pleasure to introduce Mrs. Reyes, director of the migrant education program for the Commonwealth of Massachusetts, who has been instrumental in expanding this program to many different cities throughout the Commonwealth, and involving the local communities in these programs.

She has taught in the school system of Boston, and in the primary and secondary schools in Puerto Rico.

She has been one of the leaders in demanding that the educational apparatus address itself to the special needs of the Puerto Rican community in Boston and other parts of the Commonwealth.

I think she gives this committee a new dimension about this problem as it affects the Commonwealth of Massachusetts.

I want to welcome you here, and thank you for coming. Having listened to the earlier panel, you have at least some idea of the kinds of problems that we are interested in.

We will be most interested in what observations you would like to make initially in terms of our situation in Massachusetts, and as it relates to New England, because I think we have had a very helpful and useful commentary about the problem we face in the Southwest and on the west coast.

We have real problems as well in New England, with the great growth in the Puerto Rican population in Massachusetts, which you are very familiar with, as well as the increased numbers of Portuguese who have come in now because of the Immigration Act of 1965.

So we look forward to your comments.

STATEMENT OF MRS. MARIA REYES, DIRECTOR, MIGRANT EDUCATION PROGRAM, COMMONWEALTH OF MASSACHUSETTS

Mrs. **Reyes**. Thank you, Senator.

I would like to thank Senator Kennedy and all the members of the committee for inviting me. It is a great honor.

I still have my language difficulties, as you can see, but I think that we can communicate up to a certain point.

I came from Puerto Rico 10 years ago, and even though I was a teacher there, and I taught teachers how to teach, when I came to Massachusetts, I could not teach because they said my English was poor. So I had to work in a shoeshop until I graduated from there, and I went to Boston and I started working in the school.

I think it happens to everybody who comes from different countries and who has language difficulties.

I am very much concerned about education, first of all because I am a teacher, and because I have children, myself.

For the last 5 years, the Spanish population has grown 20-fold in the State of Massachusetts. There are thousands of Spanish-speaking children in the Boston area who are not attending school, they are not even registered in school. There is a great percentage of dropouts in Boston, as well as in the State of Massachusetts.

Senator **Pell.** The children who come in who cannot speak English, would they be more Portuguese- or Spanish-speaking children?

Mrs. **Reyes.** Most of them are Puerto Rican. The Portuguese population we deal with is very small compared to the Spanish.

Senator **Pell.** In Rhode Island, it is just the opposite. The Portuguese population coming in under the new Immigration Act has increased a great deal.

Mrs. **Reyes.** Right now we are dealing with Portuguese in two parts of the State, in Lowell and in New Bedford and Fall River, which has the greatest concentration of Portuguese people that we deal with.

Senator **Kennedy.** Do you have any programs for the Greek people?

Mrs. **Reyes.** The school departments have programs, English as a second language. It supposedly takes care of all the non-English speaking children.

I have my doubts, because what is happening is that we are segregating our children. We are putting them all together in classrooms, and we want to teach them English as a second language. We want them to be able to function in American society. When they get out of those classrooms, they cannot function in any situation, because just to learn English is not going to solve their problems.

They are not ready to do anything else. They don't get to graduate. They don't get to junior high school, because they are too old by the time they get to that stage. They don't graduate from high school. To me, it is a waste of time.

Senator **Mondale.** In the North, if a child slips 3 or 4 years behind because of a language problem, at a certain point it becomes so embarrassing for an average child that he or she drops out. Maybe they are well able to catch up, but a 12-year-old boy is not going to sit with second graders and feel humiliated.

That is why it is so important to get this help earlier.

Mrs. **Reyes.** I think it is very important. That is why I am so concerned about bringing certain moneys in the community. I think it is important that these moneys be utilized to the benefit of the community and the children.

We have this great amount of money coming under title I and all kinds of titles. We have people dealing with the problems of the Puerto Ricans and telling us this is what the Puerto Rican needs, and these are the things that are going to solve the problems of the Puerto Ricans.

They prepare these programs for all of us, and then all of a sudden it happens that none of these programs are good for us or for our children, because none of us Puerto Ricans who should have something to say about it are involved in the planning of the programs.

I am also concerned because our children are becoming illiterate in both languages. They come from Puerto Rico. Sometimes they stay in school too long, and they come to Massachusetts or any other part of the United States. They go to learn English, and they drop out. They can't function in English, and they go back to Puerto Rico, and they can't function there, either. So we are just creating another monster. I don't know what to call it.

So I think it is very, very important.

Senator Pell. I would like to concentrate a little bit on the non-English speaking Spanish problem. Have you come to any conclusions about the ability of youngsters with a foreign language to learn English? Do you have any views with regard to where the emphasis should be put on foreign language programs?

Mrs. Reyes. I have taught children from backgrounds of Chinese, Portuguese, Greek, German, French, Spanish. I only speak Spanish, a little bit of Portuguese, and some English. But I have found that if you treat them right, and you give them the right kind of education, if you prepare your lessons toward their needs, they are going to learn, they have more desire to be in school.

But no matter how good the teachers are, how good the materials, if we give to them these same things, they are not going to advance into any different area.

I think we have to treat each group with its own program. Some of them are similar, but each has to have a specific program.

Senator Kennedy. As I understand it, the Puerto Rican students are pretty well isolated in terms of the schools which they attend, are they not?

Mrs. Reyes. Most of the time, they are isolated, just by creating special classes and just saying, "Well, you belong there, you don't belong here."

Sometimes the people ask, "Where is this boy?" "He is not here. He does not belong here. He belongs in the other class." We isolate them right here.

In Boston, we have a few bilingual classes, but still that is not enough. We need more. There are other places in Massachusetts where we do not even have that. We have classes with English as a second language, and the children are put together, Spanish, Portuguese, Greek, French, Chinese, all in one class and they spend the whole year there, hoping that by the end of the year the children can go back to their regular classrooms and function as the others.

The years go by, and we have a number of children being in the special classes for 3 years, and instead of the number decreasing, it is just increasing. Every year we have more and more, because the same ones are remaining.

Senator Kennedy. As I understand, the bilingual classes only apply to 500 of the 5,000 Puerto Rican students. Is that your understanding?

Mrs. Reyes. Yes. It only takes care of the very few.

Senator Kennedy. Throughout the State, there are only two other bilingual programs?

Mrs. Reyes. Yes.

Senator Kennedy. We are only really looking out in terms of these bilingual classes for 500 of 5,000 Puerto Rican students.

I understand further that there have only been four Puerto Rican students who have graduated from high school in Boston in the past 4 years.

Mrs. Reyes. Yes. We can count on our fingers how many Puerto Ricans graduate from high school every year. I don't think we are doing anything to increase the number.

Senator **Kennedy**. I understand further that 40 percent of the Puerto Rican school age children are estimated to be out of school.

Mrs. **Reyes**. Yes.

Senator **Kennedy**. Is it higher than that?

Mrs. **Reyes**. Well, you know, it is difficult——

Senator **Kennedy**. You say, "Yes," as if you understand it is a startling figure.

Mrs. **Reyes**. It is very difficult to say exactly what percentage of our children are not in school, or what percentage are in school.

I think more than 40 percent of our children are out.

Senator **Pell**. Senator Mondale.

Senator **Mondale**. Did I understand you to say that these programs would be better if there were more community participation; in other words, if Puerto Rican and Portuguese parents and leaders had more of a voice in these affairs, more sensitive programs, more responsive programs would result than if they are exclusively prepared by professional educators?

Mrs. **Reyes**. I think so, because in that way you can get the input of the people who really know, and who really have a need.

What is happening now is that we are saying this is what the Puerto Ricans need, what the Mexican-Americans need, but these are given by other people who sometimes don't even speak the language. They design the program.

Senator **Mondale**. Do you find sometimes they don't know exactly what the needs are?

Mrs. **Reyes**. Yes. As a matter of fact, I have many, many instances where I have seen English as a second language prograrm conducted by people who have no idea of what teaching language is. The difference between English as a second language and English as a foreign language, you have to approach people in different age groups and educational background in a different way. You can't approach them all the same way.

The way they design the programs, this is what is happening.

Senator **Mondale**. Suppose we had enough money for bilingual education for all children with language difficulties in your State. Are there enough qualified bilingual educators available, or could they be quickly trained? How much is the shortage of such talent, the real problem, as opposed to a shortage of money?

Mrs. **Reyes**. I think it depends on what you call qualified. There are so many supposedly qualified American teachers teaching our children.

This is something that we will have to define first, as to what you call qualified.

Senator **Mondale**. You take your definition—the kind of teachers, whether they fit some kind of accreditation standard or not, that you believe can help these children.

Mrs. **Reyes**. I tell you what I have found, and I have found this by working with teachers and teacher aides and children, that in many instances teacher aides have been more beneficial to our programs dealing with our children than the teachers.

They did most of the teaching, they did most of the work, they get less money, and still they do the better work. It depends upon how the different educational structures see things.

I came, and I though I was well qualified to work with my children. I was well qualified to work in Puerto Rico. Yet, by American standards, I was not qualified. I had to go through the whole process of tests and certification.

You know, sometimes the certification does not make you a better teacher. I understand and I realize that there are certain basic qualifications that a teacher must have, but there are other things that could be taken into consideration, too.

Senator Mondale. Just one final question.

As I understand it, Boston has a freedom of choice plan which would permit white children to escape from a school in which there is a large minority over to some other school. Is that correct?

Mrs. Reyes. I did not understand.

Senator Mondale. In other words, in sending all children from a given school area to that school, it permits, for example, a white parent to send their children somewhere else. Is that correct?

Mrs. Reyes. Yes; that has been going on in Boston.

Senator Mondale. Does that contribute to racial isolation? Do the people do that?

Mrs. Reyes. You know, it depends.

Senator Kennedy. I might add that it is also available to blacks. Other minority groups also may go to school in other areas.

I think we are the only State with a racial balance law that requires, in order for the State fund assistance to be available to other communities, that they develop programs to develop some kind of balance within their communities.

One of the programs that has been extremely successful and which has stimulated the local school districts, is the project called Exodus. Exodus transported black students from the inner city to some of the outlying communities where there were vacancies.

Senator Mondale. You also have a program you call Metco.

Senator Kennedy. That is a separate kind of program. It has undergone growing pains. It does have the support of the State. There is a good deal of interest in it. It has been developed principally because there have been vacancies in other places.

I think it would be worthwhile trying to find out what the net result of these programs has been. It has been in force now for 3 years. It is completely locally oriented and sponsored.

Mrs. Reyes. If I may say, I have a great deal of concern in relation to education when we deal with our teenagers and children who are in the junior high school, because to me those are the ones who are getting very, very little, and they are the ones who drop out from school faster than the others, because what we are giving them is not what they need. They just drop out, and they go to work for a few days, they can't function there in the community, and then they create problems.

Senator Pell. Thank you very much, Mrs. Reyes. I look forward to tomorrow morning when I will be in your State on a foreign language program in New Bedford, in Portuguese.

Thank you for coming down from Massachusetts, and for the fine work you are doing there.

The subcommittee will recess to the call of the Chair. (Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at the call of the Chair.)

EMERGENCY SCHOOL AID ACT OF 1970

TUESDAY, AUGUST 11, 1970

U.S. Senate,
Subcommittee on Education of the Committee
on Labor and Public Welfare,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to notice, in room 4232, New Senate Office Building, Senator Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senators Pell (presiding) and Javits.

Staff members present: Stephen J. Wexler, counsel to the subcommittee; Richard D. Smith, associate counselor, and Roy H. Millenson, minority professional staff member.

Senator Pell. The Subcommittee on Education will come to order. We are here for a hearing on S. 3883, the Emergency School Aid Act of 1970.

Our first witness, a very distinguished one indeed, is Mr. Clarence Mitchell, Washington representative of the National Association for the Advancement of Colored People.

We are pleased to have you here this morning, Mr. Mitchell. You may proceed.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Mitchell. Thank you very much, Senator Pell.

Mr. Chairman and members of the subcommittee, I thank you for this opportunity to present testimony on S. 3883, introduced by Mr. Javits and Mr. Pell. This legislation would authorize $1,500 million to provide financial assistance to improve education in racially impacted areas and to assist school districts to meet special problems incident to desegregation in elementary and secondary schools.

When the President announced his intention to seek passage of this type of legislation, Mr. Roy Wilkins, executive director of the NAACP, immediately expressed support of the objectives of the legislation.

Since that time, our national convention has met in the city of Cincinnati, Ohio. The delegates to the convention expressed support for the principle of giving aid for desegregation of public schools, but suggested that it would be improper to neglect the schools which have voluntarily desegregated while aiding those which have held out to the bitter end and are now acting only because of final court orders.

The delegates also expressed great concern about the burden which is imposed upon private citizens during the extensive desegregation.

They pointed out that the perpetrators of racial segregation have access to the legal resources and finances of the State as well as local governments in maintaining segregation through obstructive and dilatory court tactics.

Plaintiffs, on the other hand, must rely on private funds to protect their constitutional rights, and to remedy this, the delegates strongly recommend that S. 3883 include a provision permitting the use of Federal funds to "defray the cost of litigation to the plaintiff including counsel fee, plaintiff's experts, and out-of-pocket expenses."

The importance of this last-mentioned feature of taking care of the plaintiff's expenses is graphically illustrated by the attached statement which was distributed by members of the Erie, Pa., NAACP on Sunday, August 9, at a meeting of the executive board of the Pennsylvania State Conference of NAACP Branches in Harrisburg, Pa.

It is significant that the statement deals with a school in the far north of our country in a rich and enlightened State, and as a last resort, the branch has instituted court action but now it is confronted with the difficult task of financing the handling of the case.

It is interesting to see what is in the statement, Mr. Chairman, and I will give you a short summary of the things that seem to be important in it. For more than 5 years, the Erie branch has made the city schools the target issue.

Findings by the branch include such things as need for janitorial desegregation. The first time I read that, I was a little surprised, because ordinarily the janitor force is desegregated, but apparently they don't even have janitors in this school system.

> As few as five or six black teachers among a staff of over 800 (more have since been hired).
>
> No black nonprofessionals such as janitors, cafeteria workers, busdrivers, clerical staff.
>
> No black administrators, counselors, nurses.
>
> Old outmoded buildings, some dating back to the later 1800's.
>
> Four de facto segregated schools, others borderline. The least experienced teachers often using discarded texts and supplies, placed in these schools.

Now they point out that this has caused a great dropout of Negro students, and a systematic effort on the part of the school officials to get rid of some of them as troublemakers when they have learning problems, and some have even been arrested as a result of their effort to try to correct some of the conditions.

There is also a notation that some of the white students have now gotten together in what they call SPONGE (Students for the Prevention of Niggers Getting Everything).

This kind of condition in a school system certainly cries out for remedy, and you do need the assistance of lawyers and you do need funds, but the proposal as offered by the administration might have a little difficulty in meeting that particular kind of a situation.

It is interesting to note that at the close of the board meeting of our

State convention of branches, several representatives of local branches told me that the Erie story could be repeated in their locality.

They mentioned specifically the cities of Johnstown and Aliquippa, Pa.

Here, as they indicated, you have the seeds of community problems of one kind or another, which stem primarily from the inadequacies of the education system. In order to accomplish the objective of complete desegregation of the public schools in our country we recommend the following:

1. The funds made available must be used to assist in those school districts which are desegregated (*a*) voluntarily, (*b*) because of legislative directives of a State, county, municipal, or other lawmaking body.

I might say, Mr. Chairman, that we suggest State court decisions because that would include the California case, and we suggest legislative directives because that would include the Detroit schools which are acting pursuant to laws passed in the State legislature.

2. School districts which are desegregating in compliance with programs approved by the Department of HEW must be assisted.

3. Schools which are in so-called tipping categories where funds are needed to increase attendance of minority group students or to prevent such schools from becoming wholly desegregated must receive aid.

4. Schools racially isolated because of residential patterns must also become eligible for aid, however, in such schools, assistance should be given only when there is definite assurance that the school atuhorities are making a continuing effort to end the racial isolation of such schools and to achieve total desegregation.

5. Congress must face up to the need for repealing the contemptible additions to the law which have created confusion in the desegregation programs of this country.

The so-called antibusing provision contained in title VI of the 1964 Civil Rights Act, the Fountain amendments, and the Whitten amendments have all created mountains of mischief that bar the way to reaching the promised land of school desegregation in the United States.

Items 1, 2, and 4 are clear and do not require any explanation in this statement. Items 3 and 5 do require additional comment, and with respect to item 3, we have had extensive discussions with Members of the House and education experts on how to accomplish orderly desegregation of schools which are affected by so-called de facto segregation.

The suggestion has been made by Representative Roman Pucinski (Democrat of Illinois) and Representative Albert Quie (Democrat of Minnesota) that the Secretary of HEW could give assistance to public schools where more than 15 percent of the student population is made up of a minority group or groups but not more than 50 percent.

In discussion of this suggestion some educational experts have indicated that the 50-percent ceiling is too low. Others have suggested that the percentages should be omitted altogether and the decision to aid schools in this category should be left to the discretion of HEW.

The education department of the NAACP has suggested that it is better to rely upon the discretion of the executive branch of Government in this kind of situation, but if percentages should be written into the law the floor should be 15 percent and the ceiling should be 70 percent.

With respect to item No. 5, I wish to point out that Congress has been a bulwark of protection for civil rights since the passage of the 1964 Civil Rights law. From 1932 to 1957, the minority groups of this country had to look to the executive branch and the Supreme Court for help in protecting their constitutional rights. With the enactment of the 1957 Civil Rights law and continuing through the Kennedy and Johnson administrations, all three branches of Government were instrumental in protecting the constitutional rights of minorities; we are now in a period when Congress has become the major battleground in which the hard-won gains in the fight for civil rights are to be protected.

On the whole, the Congress has an excellent record in attempts to hold the line against those who would destroy programs of protecting the right to vote and dilute the effectiveness of Federal courts and with appoinments of the judges who are hostile to civil rights and who are advocates of racial segregation.

However, it should be noted that the segregation advocates of this country, and their allies in Congress who come from Northern States have used the appropriations bills to water down the effect of the 1954 school desegregation decision and the clear objectives of the 1964 Civil Rights Act.

The plain fact of life is that the Appropriations Committees are dominated by members who are not sympathetic to minority groups.

In the secrecy of the committee room these Members of the Senate and House concoct the kind of language that may seem reasonable on its face, but which in fact is designed to nullify the 1954 school desegregation decision. For example, by using some deceptive semantic alchemy they have made the ordinary word "busing" take on the connotation of a precious luxury which must not be paid for with tax funds.

But when we remove the verbiage and get at the facts we discover that what is really meant is a restriction on the use of Federal funds for school desegregation. When these amendments come to the floor of the House and Senate, they place the rights of minority groups in competition with the millions or billions that are being appropriated to perform the necessary functions of the Government of the United States. In this kind of contest, it has been my experience that very few Members of Congress want to take the side of the minority groups.

Usually, the solution is found in substituting language which is said to be innocuous and may, in fact, be meaningless. But these revisions, whether meaningful or superfluous, have the effect of placing the Government of the United States in the shameful position of appearing to sanction second-class citizenship for the black children of this Nation.

This legislation is before a committee which is made up of some of the most sympathetic and high-minded Members of the Congress. This committee should face up to its responsibilities to initiate repeal of all of the offending vulgarities and obscenities that have been written into the law by the contemptible efforts of those who must keep on trying to divide the children of our country into separate and unjust categories simply because of their skin color or the texture of their hair.

It should also be noted that the framers of this legislation should reject the pussillanimous soft shoe approaches that are being advocated by those who are following the advice of Prof. Alexander Bickel of Yale University.

Mr. Bickel is exhibit A of why there is a growing distrust of some white people who purport to be friends of minority groups. This is not time to cover up attempts to maintain racial segregation with complicated legal strategems and compromises.

I am sure that I speak for thousands of colored citizens when I say that Mr. Bickel should keep his nose out of this particular part of the Nation's business, but since he does not seem to want to do that, we certainly hope that the Members of the House and Senate will not follow his advice.

In that connection, Mr. Chairman, I have dealt strongly with Mr. Bickel because we have discovered that he has been very busy—Congressman Preyer of North Carolina has introduced a bill which has the Bickel blessing, and also Senator Spong of Virginia is introducing legislation which can have no effect other than to create confusion in States where public opinion is moving in the direction of trying to comply with Supreme Court decisions.

On March 5, 1970, the NAACP legal defense and education fund, wrote an extensive comment on Mr. Bickel's proposal to Congressman Preyer and also to Congressman Morris Udall.

With your permission, Mr. Chairman, I would like to ask that we insert in the record that letter, plus the statement I read about the Erie branch of the NAACP.

Senator PELL. Without objection, it is so ordered that your prepared statement and the other documents will be printed at this point.

(The documents referred to follow:)

PREPARED STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to appear to present testimony on S. 3883 introduced by Mr. Javits and Mr. Pell, this legislation would authorize one billion 5 hundred million dollars to provide financial assistance to improve education in racially impacted areas and to assist school districts to meet special problems incident to desegregation in elementary and secondary schools.

When the President announced his intention to seek passage of this type of legislation, Mr. Roy Wilkins, Executive Director of the NAACP immediately expressed support of the objectives of the legislation. Since that time, our national convention has met in the city of Cincinnati, Ohio. The delegates to that convention expressed support for the principle of giving aid for desegregation of public schools, but suggested that it would be improper to neglect the schools which have voluntarily desegregated while aiding those which have held out to the bitter end and are now acting only because of final court orders. The delegates also expressed great concern about the burden which is imposed upon private citizens during the extensive period of litigation which is often necessary to achieve school desegregation. They pointed out that the perpetrators of racial segregation have access to the legal resources and finances of the state as well as local governments in maintaining segregation through obstructive and dilatory court tactics.

Plaintiffs, on the other hand, must rely on private funds to protect their constitutional rights. To remedy this, the delegates strongly recommended that S.

3883 include a provision permitting the use of Federal funds "to defray the cost of litigation to the plaintiff including counsel fee, plaintiff experts and out of pocket expenses."

The importance of this last mentioned feature of taking care of the plaintiff's expenses in graphically illustrated by the attached statement which was distributed by members of the Erie, Pennsylvania, NAACP on Sunday, August 9 at a meeting of the Executive Board of the Pennsylvania State Conference of NAACP Branches in Harrisburg, Pennsylvania. It is significant that the statement deals with a school in the far north of our country in a rich and enlightened state. As a last resort, the Branch has instituted court action but now it is confronted with the difficult task of financing the handling of the case. It is interesting to note that at the close of the board meeting of our State Conference of Branches several representatives of local branches told me that the Erie story could be repeated in their localities. They mentioned specifically the cities of Johnstown and Aliquippa, Pennsylvania.

In order to accomplish the objective of complete desegregation of the public schools in our country we recommend the following:

1. The funds made available must be used to assist in those school districts which are desegregated (a) voluntarily (b) because of federal or state court orders (c) because of legislative directives of a state, county, municipal or other law making body.

2. School districts which are desegregating in compliance with programs approved by the Department of HEW must be assisted.

3. Schools which are in so-called tipping categories where funds are needed to increase attendance of minority group students or to prevent such schools from becoming wholly resegregated must receive aid.

4. Schools racially isolated because of residential patterns must also become eligible for aid.

However, in such schools, assistance should be given only when there is definite assurance that the school authorities are making a continuing effort to end the racial isolation of such schools and to achieve total desegregation.

5. Congress must face up to the need for repealing the contemptible additions to the law which have created confusion in the desegregation programs of this country, the so-called anti-busing provision contained in title VI of the 1964 civil rights act, the Fountain amendments and the Whitten amendments have all created mountains of mischief that bar the way to reaching the promised land of school desegregation in the United States.

Items 1, 2 and 4 are clear and do not require any explanation in this statement. Items 3 and 5 do require additional comment.

With respect to item 3, we have had extensive discussions with members of the House and education experts on how to accomplish orderly desegregation of schools which are affected by so-called de facto segregation. The suggestion has been made by Representative Roman Pucinski (D-Ill.) and Representative Albert Quie (D-Minn.) that the secretary of HEW could give assistance to public schools where more than 15 per cent of the student population is made up of a minority group or groups but not more than 50 per cent. In discussions on this suggestion, some educational experts have indicated that the 50 per cent ceiling is too low. Others have suggested that the percentages should be omitted altogether and the decision to aid schools in this category should be left to the discretion of HEW. The education department of the NAACP has suggested that it is better to rely upon the discretion of the executive branch of government in this kind of situation, but if percentages should be written into the law the floor should be 15 per cent and the ceiling should be 70 per cent.

With respect to item No. 5, I wish to point out that Congress has been a bulwark of protection for civil rights since the passage of the 1964 civil rights law. From 1932 to 1957 the minority groups of this country had to look to the executive branch and the Supreme Court for help in protecting their constitutional rights. With the enactment of the 1957 civil rights law and continuing through the Kennedy and Johnson administrations, all three branches of government were instrumental in protecting the constitutional rights of minorities. We are now in a period when Congress has become the major battleground in which the hard won gains in the fight for civil rights are to be protected. On the whole, the Congress has an excellent record in attempts to hold the line against those who would destroy programs of protecting the right to vote and dilute the effectiveness of federal courts with appointment of judges who are hostile to civil rights and who are advocates of racial segregation.

However, it should be noted that the segregation advocates of this country and allies in Congress who come from Northern States have used the appropriations bills to water down the effect of the 1954 school desegregation decision and the clear objectives of the 1964 Civil Rights Act. The plain fact of life is that the appropriation committees are dominated by members who are not sympathetic to minority groups. In the secrecy of the committee room these members of the Senate and House concoct the kind of language that may seem reasonable on its face, but which in fact, is designed to nullify the 1954 school desegregation decision, for example, by using some deceptive semantic alchemy they have made the ordinary word "busing" take on the connotation of a precious luxury which must not be paid for with tax funds. But when we remove the verbiage and get at the facts we discover that what is really meant is a restriction on the use of federal funds for school desegregation. When these amendments come to the floor of the House and Senate, they place the rights of minority groups in competition with the millions or billions that are being appropriated to perform the necessary functions of the government of the United States. In this kind of contest, it has been my experience that very few Members of Congress want to take the side of the minority groups.

Usually, the solution is found in substituting language which is said to be innocous and may in fact be meaningless. But these revisions, whether meaningful or superfluous, have the effect of placing the government of the United States in the shameful position of appearing to sanction second class citizenship for the black children of this Nation.

This legislation is before a committee which is made up of some of the most sympathetic and high minded members of Congress. This committee should face up to its responsibility to initiate repeal of all of the offending vulgarities and obscenities that have been written into the law by the contemptible efforts of those who must keep on trying to divide the children of our country into separate and unjust categories simply because of their skin color or the texture of their hair. It should also be noted that the framers of this legislation should reject the pusillanimous soft shoe approaches that are being advocated by those who are following the advice of Professor Alexander Bickel of Yale University. Mr. Bickel is exhibit A of why there is a growing distrust of some white people who purport to be friends of minority groups. This is no time to cover up attempts to maintain racial segregation with complicated legal stratagems and compromises. I am sure that I speak for thousands of colored citizens when I say that we wish Mr. Bickel would keep his nose out of this particular part of the nation's business, but, since he does not seem to want to do that, we certainly hope that the members of the House and Senate will not follow his advice.

In conclusion, I wish again to thank the members of the subcommittee who are present and also wish to express the hope that you will speedily authorize funds with the provisions that I have mentioned.

NAACP Focus Needed on Northern Schools Now

THE ERIE STORY

If you still doubt the extend of discriminatory practices in Northern School Systems and the ensuing damages committed against black students, take this minute to read of the happenings and conditions in the Erie, Pennsylvania School System.

For more than five years, the Erie NAACP branch has made the city schools its target issue. Findings by the branch included such facts as:

As few as 5 or 6 Black teachers among a staff of over 800 (more have since been hired)

No black non-professionals such as janitors, cafeteria workers, bus drivers, clerical staff

No Black administrators, counselors, nurses,

Old outmodeled buildings some dating back to the later 1800's

Four de facto segregated schools, other borderline. The least experienced teachers often using discarded texts and supplies, placed in these schools.

Using these outward manifestations of racial bias as a measure, imagine if you can, the day to day acts of discrimination that are part of the educational process! The drop out rate is exceedingly high. Hundreds of students are pushed out or indefinitely suspended—the method adopted by the schools to rid themselves of "troublemakers"! No where is the black student part of the mainstream of school life, rather he is alienated, disturbed and angry and above all so poorly educated that he is more often than not, totally unprepared to take his place in society.

Student protest bring wholesale suspensions, expulsions, arrests

Such are the conditions which have led to numerous disturbances in the Erie Schools during the past three years—both at the high school and junior high levels. Failure by the schools to act on student petitions and peaceful demonstrations brought on disorderly disturbances. Use of the police, canine corps, the courts—jails, suspensions and explsions have done nothing but postpone solutions and heighten tensions. The most recent disturbances are now termed racial in character as white students have joined together in such groups as SPONGE (Students for the Prevention of Niggers Getting Everything).

Teachers in a special meeting, drew up and submitted a hard-line discipline code to the Board of School Directors, which was adopted. They threaten to "withhold services" if not given support in discipline methods which includes corporal punishment.

NAACP turns to courts as last resort

Every conceivable method has been utilized by the Erie branch to win the needed changes in the Erie Schools. Endless negotiations, mass meetings, public demonstrations—a Black Monday have been held. Investigations and hearings by the local and State Human Relations Commissions, the Department of Public Instruction—state and federal agencies have brought about more unfilled promises than changes.

NECESSITY OF LEGISLATION

Senator Pell. Let us go right to the basic question with regard to this legislation. Would you favor passage this year, of this bill as written, with Mondale-type amendments?

Would you favor the passage of this bill written in that form, or would you oppose it?

Mr. Mitchell. One of the problems I have with the legislation is at what time do you announce your opposition. We have traditionally followed the advice of our good friend, Congressman Celler in the House, and who says, "I never roll up my pants until I come to the edge of the river." I think we would want to reserve a decision on opposition until we see what the bill looks like.

Senator Pell. We don't have that luxury. We have to proceed with a bill.

Mr. Mitchell. I know you do. This is the reason we are saying that we would like to see these additions put in. It seems to me what we are asking for is a minimum of decency, and it would be utterly unconscionable in my opinion if the committee did not do these things and the Congress did not pass such a bill.

However, assuming that they did not do it I think we would then be faced with the question of whether what has been produced is so bad that it will do harm to the children of the United States rather than good. I would say, also, that we have had a lot of discussions about the Mondale amendments. We feel they are good as far as they go, but we would think there ought to be more extensive things included.

Senator Pell. I think the choice we are faced with in this committee, and we have not wound up the hearings by a long sight, is that certain action is needed but I do not think that this bill will become a Magna Carta for new educational patterns.

I don't see it getting at the problems of the appropriations bill amendments you spoke of. Taken at face value, this administration has offered a bill to try to get it through a difficult period of time—not to redress all problems.

The word "emergency" is probably an exaggeration, because the problem may be with us until both our children are dead, but the fact is that this seeks to alleviate some of the needs. True it may be a gigantic aspirin but we may be able to get it through the floor.

I think that with the amendment you proposed it might be more difficult to get it through on the floor.

We appreciate any guidance you can give us in this regard, and would hope that we end up with a bill that is not quite as much as you would like, but still would be of help to the children and, on balance, do more good than harm.

If you could lend the weight of your very prestigious personal position and that of your group, it would help get the bill through. Otherwise, if it's not supported by you, and it is opposed by others, we will have no bill at all, perhaps that is what the liberal civil rights groups would like to have.

As a general rule, some very liberal groups say, "Well, let's see how the $75 million is spent before acting on the bill." But we are not going to see how that is spent before the end of the session, and I, speaking as chairman of the subcommittee, would like to see this bill out of the way before then.

Do you have any further comments?

Mr. MITCHELL. I would like to comment on that, Senator Pell, because I think the position of the NAACP is somewhat different from that of some organizations which believe that we should not try to pass a bill in this session, but wait until next year.

We want to see a bill passed, and that is the reason I have been spending a good deal of time meeting with Congressman Pucinski and Congressman Quie on what kind of a formula could be devised that would make this a bill that really would reach the whole country.

I don't think that the President's bill as now written would reach the kind of problems that we have, as I have mentioned, in Erie, Pa., nor do I think it would reach the kind of problem of a school which is in a largely white neighborhood, but where there are conscientious people who are trying to accomplish desegregation and need some assistance of one kind or another.

I don't think the President's bill would reach the schools in a meaningful way in the ghetto areas. I think the provisions there, which deal with cultural exchanges and that kind of thing might have some minor surface value, but they won't get at the roots of the problem.

I don't believe we have asked for anything unreasonable in these amendments, and with this committee I would think that we could get this kind of revised bill out of the committee. Then just as we have always done with other seemingly impossible situations, I think we would then try to urge members of the Senate to support it.

As you know, we have been confronted with seemingly impossible situations, every time we have tried to get a civil rights bill, or every time we have tried to oppose an undesirable appointment, but the score of success is pretty good and the reason it is that way is because people have tried to work with individual Members of the Senate.

So I would hope that we would get the very best bill out and then all of us really go to work to make sure that it gets through. I believe we can accomplish that.

Senator PELL. Thank you.

S. 4167

With specific regard to Professor Bickel's views, I gather you are familiar with Senator Spong's bill, S. 4167.

Mr. MITCHELL. I am.

Senator PELL. It is not officially before this committee as of now, but may well be. As I understand your testimony you would oppose this bill?

Mr. MITCHELL. That is correct.

Senator PELL. Would you be specific in your reply as to why?

Mr. MITCHELL. Well, we have a statement here which was prepared by the NAACP's Legal Defense Fund, as I said, in response to the requests of the members of the House who planned to introduce the Bickel proposal.

One of the key sentences in this is:

> Some things in the draft bill represent a harmful retreat from the present law of school desegregation. A major feature of the bill which I find objectionable is the elevation of a neighborhood school assignment policy into a federal statutory requirement.
>
> This type of enactment would surely be used by segregationist boards as a sword against desegregation proposals involving less traditional measures in order to desegregate schools such as school pairing, with or without busing, education parks, magnet schools, central schools, and so forth.

Then the letter indicates that in defining desegregation the Bickel draft makes a good deal hinge on the "good faith" of a school district. Fortunately, the Federal courts have taken the position that they will look at the school desegregation plans and that good faith cannot excuse continued segregation.

The letter cites cases to support that point of view. I think that it probably would not be helpful or wise for the Congress to attempt a nationwide definition of how much desegregation is required by the Constitution to convert a segregated system now into a unitary system.

The courts have been developing a definition in the common law tradition of case-by-case decisions, because the process of applying the Constitution to school desegregation inevitably requires judgment and decision of so many issues which are questions of degree and emphasis.

The courts have been hesitant to announce such a definition. I think it is like trying to write a law defining what is due process. I believe that the same problem arises. I have an extra copy of this letter which I can give to Senator Javits, if I may.

(The information referred to follows:)

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
New York, N.Y., March 5, 1970.

Hon. RICHARDSON PREYER,
House of Represntatives,
Washington, D.C.

Hon. MORRIS K. UDALL,
House of Representatives,
Washington, D.C.

GENTLEMEN: In response to Representative Preyer's telephone call last week, I am pleased to give you my views about Professor Alexander Bickel's draft bill on school segregation. I think that such a measure would be harmful to current school desegregation efforts in the courts. I do not believe that the bill would materially aid in desegregating schools either in the south or in the north.

I think that the main practical impact of such a bill would be its use as a weapon to defend segregation against attacks in the courts. We continue to believe in the goal of integrated education in American public schools and are devoting our resources to that goal. We do not share Professor Bickel's pessimism about that goal.

By and large I think that there might be some utility in having the Congress endorse some of the principles enunciated in judicial decisions requiring desegregation. But there should be a great deal of work done to avoid the danger of limiting the growth of doctrines to insure integration and equal opportunity by a bill which prohibits a few things already declared illegal by the courts and thus seems to endorse other practices not specifically condemned.

Some things in the draft bill represent a harmful retreat from the present law of school segregation. A major feature of the bill which I find objectionable is the elevation of a neighborhood school assignment policy into a federal statutory requirement. This type of enactment would surely be used by segregationist boards as a sword against desegregation proposals involving less traditional measures in order to desegregate such as school pairing (with or without busing), educational parks, magnet schools, central schools and so forth. Of course, the neighborhood served by the neighborhood school is defined by the school officials when they plan the size and grade structure of a facility and the area which it will serve. A major problem in many communities is that school neighborhoods have been consciously defined so as to promote segregation. Residential segregation is only a part of the problem.

In defining desegregation the Bickel draft makes a good deal hinge on the "good faith" of a school district. Fortunately the federal courts have adopted the view that they will look at the results of school desegregation plans and that good faith cannot excuse continued segregation. For example the Fifth Circuit recently said that "good faith does not excuse a board's non-compliance with its affirmative duty to liquidate the dual system." *Henry* v. *Clarksdale Municipal Separate School District*, 409 F.2d 682, 684 (5th Cir. 1969). The Supreme Court has adopted a pragmatic approach and ordered that school boards produce desegregation plans that will work realistically to maximize desegregation, and that such plans must be evaluated in practice and not in theory. See generally, *Green* v. *County School Board*, 391 U.S. 430 (1968) ; *United States* v. *Montgomery County Board of Education*, 395 U.S. 225 (1969).

I think that it would probably not be helpful or wise for the Congress to attempt a nationwide definition of how much desegregation is required by the Constitution to convert a segregated system into a "unitary school system." The courts have been developing a definition in the common law tradition of case-by-case decision. Because the process of applying the Constitution to school desegregation inevitably requires judgment and the decision of so many issues which are questions of degree and emphasis, the courts have been hesitant to announce such a definition. I think that Professor Bickel's draft definition would be used mostly to defend the failure to make changes in segregated patterns even where practical and feasible alternatives to the segregated status quo do exist.

The United States Commission on Civil Rights has issued an excellent series of reports and studies on school desegregation. Some of them contain proposals for action by Congress. My impression is that they have been largely ignored, and I hope that if you plan to pursue this matter you will refer to those studies and make use of the Commission's work. In 1967 the Commission Report "Racial Isolation in the Schools" did endorse the idea of legislation to establish uniform standards providing for the elimination of racial isolation in the schools north and south. I think that the Commission's approach merits further exploration if there is a possibility of legislation to attack the problem of racial isolation on a national basis. The Commission has suggested among other things the use of federal financial incentives to encourage and support desegregation measures.

I regret that my hurry to respond to your request has not permitted me to take the time to give a section-by-section close analysis of Professor Bickel's proposals. I know that his work deserves a more detailed analysis than the generally conclusory treatment I have given it in this letter. But I thought that you were mainly interested in my general reaction. I regret that I am unable to endorse the main thrust of the Bickel proposals. I will be happy to work with you in any way that yo uthink useful to achieve integrated schools and equal educational opportunity.

Sincerely yours,

JACK GREENBERG,
Director-Counsel.

TREATMENT OF BLACK TEACHERS

Senator **Pell**. We have heard a good deal about the plight of the black teachers in the South. Do you have any figures on this?

Mr. **Mitchell**. I do not with me, but I will be glad to submit some. I will get them from the defense fund.

TRANSFER OF ASSETS

Senator **Pell**. The final question I have concerns the transferring of public assets to private schools. Could you furnish us a statement for the record with regard to any specifics on this subject.

A good deal of information is already being developed by the select committee on equal educational opportunity.

Mr. **Mitchell**. I certainly will. I might say that the Mondale amendment, of course, addresses itself to that problem, and it is very serious, the transferring of school facilities and properties to prosegregation groups.

I understand that the technique is to offer these things at a very cheap price, and then, of course, the proper segregation groups snap them up and use them in segregated schools.

I think it might be interesting to note, although it is not exactly on the point you mention, Senator Pell, that the segregationists have made a great deal of noise about the problem of busing, but I saw some figures the other day indicating that 40 percent of the children who attend these private segregated schools are bused to the school location.

Senator **Pell**. Thank you very much.

Senator Javits?

Senator **Javits**. Thank you, Mr. Chairman.

Mr. Chairman, I would suggest two things. One would be to put the particular piece in the New York Times that Mr. Mitchell speaks about in the record as part of his testimony.

Senator **Pell**. Without objection.

(The article referred to follows:)

[From the New York Times, May 24, 1970]

SCHOOL BUSING A U.S. TRADITION—PROGRAM WELCOMED FOR YEARS EXCEPT FOR INTEGRATION

(By Davis Johnson)

Lansing, Mich., May 11.—Nearly all the turmoil in the country over busing pupils to school has come with its use for racial integration. Even though busing for that purpose accounts for less than 3 per cent of the century-old, billion-dollar program of student transportation.

"We have had no complaints over busing unless integration was involved," Dr. John W. Porrter, acting superintendent of public instruction for the Michigan Department of Education, said in an interview.

The comment was typical of those from dozens of state education officials from all sections of the country who were questioned about the impact of school busing in their areas.

Free rides to school for pupils have been welcomed by most parents ever since Massachusetts passed the first state law providing them in the horse and buggy days of 1869.

By 1919 all states had followed suit, and by 1930 busing had begun a period of dramatic growth. From 7 per cent of the country's enrollment in that year, it has increased to 40 per cent today, making school busing the largest transportation service in the United States.

66 PERCENT OF ALL PUPILS BUSED

The 40 per cent excludes millions of pupils who use public transportation, often at their own expense, to get to school in cities. Altogether, state and Federal officials estimate, about two-thirds of the country's 45 million pupils are bused.

This massive growth of busing provoked little resistance till court and administrative orders in recent years began to require busing for racial integration.

The resistance has ranged from violence to buses in such cities as Lamar, S.C., and Denver to antibusing petition campaigns in cities from coast to coast.

Senator John C. Stennis of Mississippi reiterated the view of many opponents when he told the Senate recently that "parents are not going to permit their children to be boxed up and crated and hauled around the city and country like animals."

Dr. E. Glenn Featherston, deputy associate commissioner for Federal-state relations in the United States Office of Education and for more than a quarter of a century the Federal Government's foremost specialist in pupil transportation, estimates that about 90 per cent of the nation's busing has resulted from school consolidations.

Although busing was at first a rural phenomenon, it has increased in recent years in the suburbs of major cities to provide transportation for high school students.

OTHER REASONS FOR BUSING

Dr. Featherston said that minor reasons for the increase in busing included recent shortening of distances for busing in some states, special pick-ups because traffic conditions would make walking hazardous, taxi service for the handicapped, liberalized regulations about giving rides to private school pupils, and busing for racial integration.

He agreed with state officials that only the last reason had produced any turmoil. Opinions differ as to how much of it is due to racism and how much to genuine fear that busing a child away from his neighborhood would harm his education.

In the South, busing children away from the home neighborhood to maintain segregation was customary before integration orders began to follow in the wake of the Supreme Court ruling against school segregation in 1954. Resistance stressed "freedom of choice" in schools.

Outside the South, however, resistance to integration orders has stressed allegiance to the neighborhood school system, often a system that was segregated because of segregated residential patterns.

While scattered cities in the North have experimented voluntarily with intercity or city-suburban busing for integration, court and administrative orders for classroom integration that involved busing have been bitterly resisted by at least a vocal minority ever since James E. Allen Jr., then New York State Education Commissioner first ordered Malverne, L.I., schools integrated.

STRIFE IS PERSISTING

The strife is continuing as more of the battle for integration moves from the South to the North. The situation in Pontiac, Mich., illustrates in microcosm the arguments pro and con and the tension generated by the issue.

With Michigan's first court-ordered busing for school integration due in Pontiac in September, the Washington Irving Elementary School's parent-teacher organization there has voted to seek secession from the Pontiac school district.

Last February, Federal District Judge Damon J. Keith, former cochairman of the Michigan Civil Rights Commission, ordered integration of the 25,000-pupil district. In March he approved a plan that would mean busing half the enrollment.

The Concerned Parents of the Pontiac School District was formed. About 90 members, in automobile caravan, brought petitions with 15,000 signatures opposing the plan to the Governor and legislators here.

Representative Jack McDonald of the Pontiac area introduced a bill in Congress to prohibit busing of students for racial balance. Last week the Pontiac school board took the Keith order to the Federal Court of Appeals for the Sixth Circuit in Cincinnati.

A DIVISIVE CONTROVERSY

Pontiac, an automobile-manufacturing city of 68,000 whites and 17,000 blacks, is sharply divided over the issue. Dr. Dana P. Whitmer said in an interview that it was the most divisive school controversy in the community in his 15 years as superintendent.

Pontiac already buses 3,600 children up to three and a half miles within the 40-square-mile district, in most instances because they would have to cross streets at intersections with heavy traffic.

None of these pupils is bused to achieve integration and busing them has aroused no opposition, said Vernon L. Schiller, business manager of the district.

About 12,000 pupils would be bused under the court-approved plan, for distances about the same as children are now bused.

Superintendent Whitmer said that opponents invariably prefaced their objections to the new busing plan with "I'm not opposed to integration, but. . . ."

Following the "but," he said, come expressions of concern that parent-teacher association for the benefit of a child's education would be more difficult wherever distance between a home and a school was lengthened; that educational programs might have to be sacrificed to pay for additional busing; that extracurricular school activities would be curtailed if a student had to catch a bus home after school, and that animosities in a changed environment might cause disruptions not conducive to learning.

SAFETY A MAJOR FEAR

He said a major fear seemed to be for the safety of pupils "in a strange neighborhood farther from home, particularly if the neighborhood has a different racial complexion."

Dr Porter said the cost of busing was a consideration holding back voluntary efforts by cities to integrate.

Like most states, Michigan now excludes city districts from aid for busing that is wholly within city limits. Most pupils Pontiac now buses live far enough outside the city limits for the state to pay much of the cost.

Unless pending legislation is passed to provide state aid for busing in cities, all of the cost of the court-ordered busing for integration in Pontiac, estimated at $1.4-million the first year, will have to be borne by the Pontiac school district.

Nationally, the cost of state-aided programs for busines 40 per cent of all pupils is more than $900-million and growing annually, figures compiled by the National Education Association show.

The outlay is second only to the cost of teachers' salaries as an educational expense. Forty years ago, $55-million and 58,000 buses did the job. It takes 236,000 vehicles today.

CONSOLIDATION A KEY REASON

A major reason for the increase, every state official questioned agreed, has been the virtual disappearance of the little red schoolhouse from the rural scene, resulting in the consolidation of 100,000 school districts into 17,000.

Much of this occurred in the period following World War II. Dr. Featherston said opposition to busing for consolidation had always been "very minor."

"Some parents didn't want to lose their local schools and have their children go into town," he said, "but they eventually realized that the kids got a better education in a larger school."

Even in busing for integration, there is little evidence that the opposition is to time spent on a bus or hardships endured in waiting for or taking the ride.

In the South, busing has long been a favored tool for providing an education. Integration orders have not increased its use.

In a statement last month in response to a statement by President Nixon, opposing busing for integration, the United States Commission on Civil Rights said:

"For decades black and white children alike in the South were bused as much as 50 miles or more each day to assure perfect racial segregation."

"No complaints then were heard from whites of any harmful effects," the commission said.

BUSING IN THE SOUTH

Southern educators felt busing was so essential that numerous counties in Mississippi, Louisiana, Alabama, Georgia, North Carolina, Texas and Virginia transported almost all their pupils, white buses taking white children to white schools and Negro buses meeting them on the streets while taking black pupils to Negro schools.

About 90 per cent of 300 desegregation plans approved by the Department of Health, Education and Welfare for Southern school districts last year decreased total busing.

> "We have saved money by maintaining one bus system instead of two," Roy Walter, director of school transportation and driver education for West Virginia, told an interviewer.
>
> Despite their speeches denouncing busing to achieve integration in public schools, many Southern legislators now support busing to private schools recently established to provide a segregated education.
>
> The Southern Regional Council reported last month after a survey: "Parents do not move their children from public to private schools because of threats of increased busing. Not only is busing the way of life in private segregated academies; it is in the segregated schools where proportionately more busing is done and for longer distances."
>
> The rigors of busing, with rides extending up to 83 miles in some parts of the West, produced no official solicitude until integration became a purpose. Louisiana even transported children by boat.
>
> "We have had a lot of demands for additional transportation," said John Maddox, superintendent of transportation for the Georgia Department of Education. "The state doesn't bus children living within a mile and a half of their schools, and parents want the free transportation."
>
> The demand is common to South, East, North and West.

Senator Javits. And also, Mr. Chairman, that we incorporate in the testimony before the committee such parts of the testimony before the Select Committee with respect to educational opportunity as the chair and the ranking minority member, in our case, Senator Prouty, may determine to be appropriate.

Senator Pell. Yes, and with the approval of Senator Mondale and his ranking minority member.

DESEGREGATION PRIORITIES

Senator Javits. Yes, of course. Now, Mr. Mitchell, I would like to ask if you place a greater priority on using the resources which will be available to the Federal Government if we pass this bill of $1½ billion—less the $75 million contained in the education appropriation bill—to deal with the de jure segregation or whether you wish the same order of priority both?

Mr. Mitchell. I think we must, Senator Javits, have the same order of priority for both. This is the reason I cited this Erie school case.

I think generally in this country we have terribly explosive situations because of problems in these de facto areas. I understand that a school valued at $1½ million was severely damaged by fire up in Erie and apparently it was an outgrowth of the dispute and the festering arguments among the people about desegregation in those communities, and most of those living in such communities feel there is just no way out for them except through court action or other kinds of challenges.

So I would give equal priority.

Senator Javits. You understand, of course, that when you are dealing with de jure segregation, you are dealing with a proper action of the U.S. Government to gain a constitutional right for people who were denied it.

On the other hand, when you are dealing with racial isolation or de facto segregation—incidentally, do you consider both catechisms to mean the same thing?

Mr. Mitchell. I don't see any differences, and now I am speaking as a lawyer. I think if you trace to its origin the establishment of any school policy which deals with the assignment of children to schools, you will find at that origin there is State action which, in my judgment, would make de jure segregation.

However, accepting the popular concept that they are different, I would say that they are equally harmful.

Senator JAVITS. You therefore believe the law should cover both the Federal Government's responsibility to redress law violations as well as the Federal Government's responsibility to afford the maximum, optimum education that it can to our children?

You would put them on a par?

Mr. MITCHELL. Senator Javits, I don't see how you could separate those two things.

Senator JAVITS. Do you advise us, Mr. Mitchell, as the best adviser of black leadership, to deal with the peace and tranquility of the country?

Mr. MITCHELL. I am not sure I understand you.

Senator JAVITS. I want to speak to you directly, and I always have.

Mr. MITCHELL. You do, and I appreciate it.

Senator JAVITS. Because we have a double problem in this country of enforcing the law and avoiding riots and bloodshed. It is very important to us what such a highly respected organization as the NAACP thinks about peace and tranquillity as well as about law enforcement.

Mr. MITCHELL. Well, I certainly would like to have peace and tranquillity not only because it is good for the country, but I think in the neighborhood where I live, which is a slum area, I could sleep a little more peacefully at night if we had peace and tranquillity.

A couple of nights ago I was sitting on my front step and I noticed two little boys playing beside an automobile. Suddenly they jumped up and threw what they intended to be a molotov cocktail at a house where somebody lived that they did not like.

Fortunately, it did not go off. They were not as skilled as they might have been at making it. So I have not only an academic view of this, but a very practical exposure to it.

So I say of course we want tranquillity and peace in this country but there is no way to have it unless we address ourselves to the problem that causes the uproars and the confusion.

I think that education is one of the best places to start. I think that as much as we would like to have a bill which just provides the money to do whatever seems most pressing at the time, we have got to recognize the fact that if we really want to correct problems in this country, we can't think of the next 2 years or the next 5 years.

We have got to think of the next decade, or maybe the next 20 years, and think in terms of doing now the kind of job which in the schools at least will enable us to get rid of some of the tensions that are causing trouble in this Nation.

Senator JAVITS. And that is the reason you advise us that we should give the same priority to the use of this billion and a half dollars for correcting unlawful segregation as we do for correcting racial isolation which so far has not been held to be unlawful?

Mr. MITCHELL. That is correct. We would hope that the Supreme Court would find that it is unlawful, but I would say this: I think in providing aid for these schools that are the so-called isolated schools, we have got to be sure we don't do it in a way that we compound the error by continuing segregation.

In the neighborhood where I live, for example, there is a school which is about three blocks away from my home.

You could easily spend $4 or $5 million—it is a junior high school—in making that a wonderful educational temple for the children who are drawn from the surrounding neighborhood.

But unless you use some ingenuity and comomnsense, it would forever after remain an all-Negro institution, and I think this is the kind of reason why and I think this is the reason why we need then in this legislation a provision which says, "We will give aid to that kind of school, but the condition of that aid is that we will continually review the practices of the local school authorities to make sure that they are trying to break up that racial isolation, rather than just perpetuating it."

REASONS FOR AN UNSEGREGATED EDUCATION

Senator Javits. Is your reason for that a better education, or is your reason some other reason, moral or otherwise.

In other words, the prevailing view of educators now is that a racially segregated education is deficient in light of the American experience. Now suppose the technicians and educators came to some other view the next day, or in a year, where they felt that you could get as optimal an education for the child in an all-black situation, which they don't think now.

Would that change your view, and, if so, why?

Mr. Mitchell. It would not change my view, Senator Javits, because, while I have a great respect for experts, I have an even greater respect for experience and commonsense in handling various problems that confront the human race.

When I was a young man, Negroes were not admitted to the law schools of many of the Southern States. In an effort to meet the constitutional requirement of providing educational opportunity for these aspirants to the law profession, some of the States set up separate schools, but the courts pointed out that in a lawyer's experience he comes in contact with classmates who will become judges, prosecutors, the members of the legal fraternity in his profession in his community, and therefore it is a handicap to a lawyer to put him in a situation, when he is in training, where he will be in contact only with the members of one segment of a community.

I think that applies all across the board, and I conclude on the basis of commonsense and my own experience, without even bothering to refer to what the experts say, although I know that they hold as you have stated, I have concluded that it is absolutely impossible to give children adequate education for today's world if you put them in separate schools.

Inevitably, the political life of a community being what it is, the separate schools which are for the black children do not get the same kind of treatment that then is given to the white children. I think it is an unchangeable truth in the field of education, as the Supreme Court has held, that separate education is unequal.

Senator Javits. So your reasons are not only education, but the total educational experience?

Mr. Mitchell. I don't see how you can separate those things. For example, let us say in the civics class, it is the intention of the faculty people to bring the children to Washington, and some of the persons who know you, or know Senator Pell, because of their personal contact with you pick up the telephone and quickly arrange, even though it had not been in the original plan, a meeting with you so that the children have the advantage of seeing their U.S. Senator.

They have the advantage of being conducted up to the gallery, as you can and do. Also there are often things that you do for them. Along comes an all-Negro institution where it might be from a State in which the Senators are not as friendly as you are, and not as disposed to try to look after the schoolchildren, or the black group.

They just never get the experience.

I feel that if we are going to educate children, we just don't confine ourselves to the classroom, we give them the total experience of practical life—I just want to make one observation in that connection.

A friend of mine who is a former schoolmate is now living in Norway. In a visit last week she said that in Norway efforts are being made to arrange situations where as a part of the educational program, children will be exposed to hazardous situations. For example, instead of 350 building a nice swimming pool, they rehabilitated the old swimminghole, so that the kids can understand practical hazards.

Well I think this is true of all education. We can't just have it in a classroom. We have to reach out in the practical, everyday experiences with all their risks and all their benefits if we are going to give the children all they need to have.

DISTRIBUTION FORMULA

Senator Javits. In view of the priorities to which you have testified, what do you think about the provision of the administration bill which would distribute two-thirds of the available funds on a State-by-State formula, but which holds one-third of the funds for the Secretary of HEW for distribution and allocation as he might be advised in the best interests of the legislation?

Mr. Mitchell. We discussed that particular item Senator Javits, and I think we, as an organization, would like to see a smaller part of the money within the discretion of the Secretary of HEW.

That is the organization position. We have not spelled out how much would be within the discretion, but my own personal feeling is, and this is a feeling based on the experience around here in the last 30 years in the Capitol, the most important thing that you can have in a program of this kind is a man of integrity and ability doing the job. In my judgment if you have that kind of a person you don't need to worry how much of the money is being handled by that particular official.

So I guess the answer is that we would like to see a lesser sum than one-third in the Secretary's hands, but we also point out that the fundamental question is: Will we get a person of strength, of integrity and ability who will fairly administer that part of the law?

Senator Javits. Of course, another aspect of it is the formula by which the greater proportion is distributed. You have to be sure that that formula would not enforce a priority which you say is unwise to enforce, to wit, a priority over correcting de jure segregation, to prefer that over racial imbalance, and yet you understand that that is very likely to happen.

Mr. MITCHELL. It will certainly happen if we try to do the double counting, and if we confine the aid, to which is not under the discretion of the Secretary, to schools affected by Federal court orders, that would automatically write off the States which have great need, like California and Michigan, Pennsylvania and others.

I think the administration ought to keep in mind that when we were working for the passage of the voting rights bill, the administration took the position that they did not want any regional legislation.

Well, in the form that the President has proposed it, this is regional legislation, but we have a national problem, and I think that the administration could just follow its own advice and avoid regionalism by supporting legislation which would reach the whole country.

Senator JAVITS. The division of these resources; should there be a relationship in which the States receive part?

Mr. MITCHELL. A question has arisen on how you get the count. I would like to say for whatever it is worth, it seems to me the simplest way of getting a count of minority group children is to ask the teachers in classrooms, or count heads without names, and turn those figures into the principal who in turn would give them to the officials to transmit them to Washington.

LITIGATION EXPENSES

Senator JAVITS. There are two suggestions I would like to comment on. These are suggestions made in your testimony. One is an amendment to the administration bill, S. 3883, to help defray the cost of litigation, including counsel fees, plaintiff's experts and out-of-pocket expenses.

You would like to see that included. We have done something like that in the equal employment opportunity bill which was just approved by the committee—and I assure you that Senator Pell and I will be most sympathetic to trying to get that.

BUSING

Another thing which you speak of is busing, and you have a very interesting suggestion, that we seek to really eliminate in this legislation the inhibitions or prohibitions of the various amendments with which we are so familiar around here with relationship to the busing question.

Now I would like to ask you a question, and this comes now as to the attitude of the black community.

The big point is made that busing may only be involuntary where it is in pursuance of a desegregation plan, and either pursuant to a court order, or with HEW and that all other busing must be voluntarily done. That would include, of course, busing as to racial imbalance, because that is not a subject of agreement with HEW or the subject of a court decree. What do you say to that and I would like the attitude of the black community.

Mr. Mitchell. I have the good fortune of being one of your friends for so many years, Senator Javits, that I ought to in fairness say that I don't think anybody could give you the view of the black community.

I think one can only give the view as one sees it, from his vantage point.

It is my opinion that the question of busing among the people of the so-called black community is really an irrelevant problem.

If it is necessary to give children a good education by putting them on a bus, I think people not only want to do it, but have done it.

I believe there is resentment about the one way street arrangement on these things. The busing plans to achieve desegregation usually are designed to take the Negro children out into the white community, but not to bring any children back into the black community.

In my judgment, in order to be fair about it, if white children are to be brought back into the black community, then there ought to be something worth while to bring them to, which means that we must have schools or teachers or courses that are really desirable, and that the parents of children want their children to be exposed to.

I don't think we have had that yet in this country, but in my judgment, if we put the safeguards such as we have suggested in this legislation and appropriate the money, I believe we can accompish it.

It is amazing to me as a grandfather that there would be any dispute about busing, because I would—I so well remember the course in education, or whatever you had to take in college to graduate, where we talked about consolidated schools, which meant we eliminated the little country schools and bused children for miles which we continue to do, in order to give them a good education. If we say that busing must be voluntary in all situations, except that which you mention, we would have to abolish the compulsory school attendance law, because all the parent would have to say if he did not want to send the kids to school, and would prefer to have them pick cotton or something, would just have to say, "I am not going to submit to busing."

Senator Javits. So you would apply the standard of relevancy to any kind of busing, so long as it is consonant with an optimum education?

Mr. Mitchell. I certainly would, Senator Javits. I don't see how you could expect a successful desegregation plan if you tie the hands of the local board of a school by saying "you can't have any of this money for busing", then they are confronted with a situation where it may be necessary to use some busing in order to accomplish an adequate desegregation plan. By withholding the funds, the Federal Government is a party to continued segregation.

Senator Javits. Thank you very much.

Senator Pell. Thank you very much, and thank you, Mr. Mitchell, for coming up here, and we will take your considerations very seriously indeed.

Mr. Mitchell. Thank you.

Senator Pell. Thank you.

Our next witness is Mr. Paul Parks, Director of the Model Cities program for the city of Boston, Mass.

STATEMENT OF PAUL PARKS, DIRECTOR, MODEL CITIES PROGRAM, BOSTON, MASS.; ACCOMPANIED BY DR. BARBARA L. JACKSON, ASSISTANT ADMINISTRATOR FOR EDUCATION AND TRAINING, BOSTON MODEL CITIES; AND MRS. VIRGINIA RICHARDSON, ASSISTANT ADMINISTRATOR FOR ADMINISTRATIVE SERVICES, BOSTON MODEL CITIES

Senator Pell. Would you introduce your colleagues?

Mr. Parks. Mr. Chairman, I have with me to my left Dr. Barbara Jackson, who is my assistant administrator in charge of education and training programs in Boston.

To my right, I have with me, Mrs. Virginia Richardson, who is assistant administrator for administrative services for Model Cities and I would like to take this opportunity to thank you and the committee for inviting us here to testify on Senate bill 3883.

We would like to place ourselves in favor of this legislation, and would like to say a couple of things concerning it. First of all, the question of de jure versus de facto, and let me go back for a moment and say that I have been privileged to work throughout the country along with the assessment of education that was funded by the Carnegie and the Ford Foundations and, where we went into communities all across the country, looking at education trying to get and adequate assessment of what we were doing in American public education.

Also, I was privileged to work at the State legislative level and again the passage of what is called the racial balance act of the Commonwealth, which outlaws all racially imbalanced schools in the Commonwealth, and mandated upon those communities that had racially imbalanced schools, and found racial imbalances being any school that had 50 percent minority population, and mandated that each one of those communities that have such schools in operation should immediately submit plans to the Commonwealth of Massachusetts as to how they were going to solve their problem.

So that bill was passed in 1965.

Also, I was a part of the establishment of what is called the METCO program in Boston, which takes black children out of the black community and the inner city and we moved them to some 26 communities which are predominantly white, outside the city of Boston.

There the State legislation, once again, that pays for the cost of the movement of the children, and at one point was paying for the cost of the tuition they were attending outside their community.

I am glad to say at this point that most of the communities outside Boston who are receivers of the children have eliminated a tuition cost, and the cost now is supportive services for the children in the schools they arrive in, and the transportation of children to those schools.

I was also a party to the organization of the program where we moved children to predominantly white schools within the city. We come at this bill from a position of support, and the fact that we are talking about education.

We have learned an awfully lot in Boston, and in Massachusetts and we have learned the question is not the movement of children so much as it is what kind of education are we going to provide for children who are presently living in the inner city, and indeed throughout the State, that quality education should be the objective of all of us, as we talk about desegregation plans?

One of the things about this bill is that it begins to allow the Department of Health, Education, and Welfare to get back from the communities plans that integrate good education as well as the desegregation problem.

It also begins to suggest to the communities that are presently under mandate by the courts to desegregate who see this as a punitive position for the Government, as saying, "Now, we will in fact support you if in fact you take the position that you are willing to deal with and to eliminate desegregation in your school systems."

I think this has been long needed. We find that with our racial imbalance act, then it only dealt with the physical development and structures.

We said that if you build a school to eliminate racial imbalance, then the Commonwealth will give you an additional amount over the 40 percent that is presently allowed in the State aid formula. We will now give you 65 percent for those school buildings.

The problem came by the fact that there was no money for programs, and when the children arrived at the new school we made the judgment that just by having them there, that where they were going there was good education, and that they would see better education than where they were.

What we found is that there was a question about the eduaction at the school they were arriving at. There is a question about the quality of education, as well as the question of where they were before.

So now with this possibility of some legislation which will allow school districts and systems to devise a plan that will include this, then we can begin to see that it gets incorporated into those plans, the plans to deal with the educational stuff that is going on inside the school building.

So, for that reason we feel this is a giant step in the proper direction. We also feel that unless this happens, we may well see what we have seen in the Commonwealth, where we really have not been able to address ourselves to the question of racial imbalance.

We also take the issue that the question has been asked, "What about the attitude of the Black community?"

I would certainly say that the Black community as I have been able to envision it, having been a part of the community all my life, that we had some problems with the fact that we were busing kids out of their schools, and somehow arriving at a school that was all white, and people said they already mentioned it as the way to get quality education, for a black kid to be in a white setting, and we feel that is completely untrue.

The other part of it is, also, that we have had the experience of busing children the other way. We have a school that we built under the racial imbalance act in the black community in which now we have some 40 percent of the kids being bussed in who are white to that institution.

The reason why the parents are willing to come to the institution is because they know at that institution there is a high standard of education. Quality education prevails there. So we have white parents who are more anxious to get into that institution from other parts of the city.

This begins to suggest that with the proper kind of planning, and if the funds were available to do this kind of planning, we could begin to make real inroads into overcoming the racial isolation throughout the country.

We have had this experience. We see this bill as giving us an opportunity. There was a question as to whether or not there should be one-third of the funds left to the discretion of the secretary.

We feel very strongly about this provision because one of the things we have been—and I can put my hat on as the model cities administrator—one of the problems we have had with Federal programs is that when we sit down with the city officials to develop a plan, that it was difficult to take that plan to the Government under any program whatever, and to take that particular plan to the Federal Government's particular section, whatever department it was under, and get that program funded, because there were guidelines that had been established that many times which obviated the possibility of carrying out the local plan.

I think it is important to have the discretionary funds to look at the school systems that are beginning to tip, and begin to deal with those before they become so hard and defined as racially imbalanced or de jure segregated, you know to deal with that as it occurs.

So we feel very strongly that those discretionary functions should maintain themselves in the legislation, and will support that very strongly.

One says one-third versus two-thirds. I think as much as we can put into that discretionary fund is important if we are going to pull this off.

I have felt strongly after seeing the community's plan in model cities being constantly retailored to fit Federal guidelines; this has been a constant problem that we have been facing, because each community has a different set of nuisances as it deals with this problem, and I think it is in the wisdom of the people who drafted the bill that they included this in the bill.

Senator PELL. Thank you, Mr. Parks, very much indeed. You did not read your statement. But I will be sure to read it.

I am glad to have a witness, too, who feels very strongly about this bill one way or the other. Specifically you favor enactment of the bill as drafted?

Mr. PARKS. Yes, I would and let me just explain once again, I have experienced for years legislation that was brought up at a certain time and place in our history that did not get passed because it did not have all the things everybody wanted in it.

At the same time I have come to realize that we have to take our steps and we have to get to the point here where we can begin to deal with an issue.

To lay it aside and not do anything about it that is, then at this point would be tragic.

MONDALE AMENDMENT

Senator Pell. Would you prefer it with Mondale-type amendments, or without?

Mr. Parks. I don't think I am really concerned about whether they are there or not.

Senator Pell. It is the basic thrust that you believe in?

Mr. Parks. My trust lies with the people who are going to see that the bill is carried out properly because at the community level we have gained a lot of sophistication in dealing with the Federal Government, and we will be, once given the opportunity to bring our issues to the various sections, we can then begin to get the kinds of things that we would like to get.

I think there is enough room in the amendments, or in this bill, to allow us to do this.

(The prepared statement of Mr. Parks follows:)

PREPARED STATEMENT OF PAUL PARKS, DIRECTOR, MODEL CITIES PROGRAM, BOSTON, MASS.

Racial isolation within public schools exists both North and South. Although the legal terminology for it differs—"de facto" versus "de jure"—the effect on children is the same. Efforts to eliminate this problem have brought a new focus on the need to provide higher quality education for all children, white and black, and to re-examine existing methods of providing education. The possibility of improving the quality of education depends on substantial increases in available funding. In the historic 1954 Brown decision on school desegregation, the Supreme Court said of education:

"Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

If public school systems across the country are to fulfill their mandate to assure equal opportunity as a method of strengthening and unifying American society, they must have the means to do so. The bill before you offers this opportunity on an unprecedented scale.

In 1965, the Commonwealth of Massachusetts passed historic legislation outlawing racial isolation in its schools and offering financial incentives to local school boards to eliminate racial segregation. This incentive is in the form of additional state aid for the construction of new school buildings—65% rather than the normal 40%. In 1965, Boston's school system had 21,097 non-white pupils (23%) and a total of 46 imbalanced schools. By 1970, the school population had become 31% (29,298) non-white and the number of imbalanced schools had risen to 62. This represents nearly one third of the 192 schools in the city.

Boston has tried several approaches to alleviate its racial imbalance problem: 1) open enrollment, 2) over-building, or the construction of schools in white areas which have greater capacity than is needed for the neighborhood population permitting non-whites to transfer, 3) fringe area schools, or schools constructed at the border between black and white areas of the city, and 4) magnet schools, or buildings incorporating unusually attractive educational programs to encourage voluntary enrollment of white students in a black neighborhood. In addition, METCO and Exodus are programs initiated by the community to provide the means for non-white students to enroll in schools outside the black community. While these programs now receive state funding, barely 4% of the 29,258 non-white students in the Boston Public School System are enrolled. Obviously the large concentration of non-white students in ghetto areas of the city make it unlikely that these approaches alone will be able to provide an adequate solution.

Members of the State Board of Education, the body responsible for enforcing the Racial Imbalance Act, have been unanimous in their desire to support desegregation proposals, but have been unwilling to impose solutions on local school boards. Their concern has been frustrated by the length of time required to develop and implement construction programs. Black communities across the state share this frustration and the additional frustration caused by the fact that the imbalance law provides no funds to implement new program ideas.

In response to the frustration of the community and to the need for a new approach which would overcome the difficulties of racial segregation by neighborhood, the Boston Model Cities staff and the Boston School Department, working as a team, have developed what is known as the Partnership Concept for new educational programs and facilities.

The Partnership Concept provides for children and teachers from white and non-white schools in different parts of the city to participate in a new program which eliminates racial isolation. Double classroom units, half from an imbalanced school and half from a white school, will be taught by a team which includes both of the regular classroom teachers, a parent aide from each neighborhood and a special resource teacher. The double units will share a program which takes advantage of the stimulating resources of major cultural institutions, such as museums, fine arts centers, zoos, aquariums, universities, etc. The curriculum will include all of the basic skills in reading, mathematics, science as well as intergroup relations materials and ethnic history and culture. School will not be defined as a single building, but as the program which provides varied and broadly integrated learning experiences for children. A new kind of partnership is created not only between neighborhoods, but also between the cultural institutions where the resource centers will be developed and the public school system itself. This new concept has been endorsed by the State Board and the Board of Superintendents of the Boston School Department and a 3.5 million dollar, three year demonstration project has been developed, although its implementation must rely on funds to be made available by the Federal government.

Boston is fortunate to have a large number of major cultural facilities which are eager to expand their educational services to the community. The notion of using the city as a school, however, is one which is already being implemented in several cities, with and without the construction of new resource centers as Boston proposes to do. (Philadelphia Parkway Program, Chicago Metropolitan High School.) Many other solutions must be encouraged to develop as strong *educational* improvements rather than mere supplementary services—breakthroughs in making public education accomplish its goals must be made.

Many cities, north and south, will find themselves responding to some common problems and conditions. These conditions include—

> Dense concentrations of black students, geographically. Efforts to overcome defacto segregation which do not break the barriers of neighborhood isolation cannot succeed in eliminating racial isolation. The city as a whole, and especially its major public places, may be seen as "neutral turf" to which students from all over the city may go.
>
> Disillusionment with the pace of change. As a result of the slow rate of response to the Supreme Court's 1954 ruling, blacks found it necessary to question integration as a strategy and to develop the more recent approaches variously seen in black power and separatist movements. The essential goal of integrated school experience does not conflict with these strategies: that children who have been systematically denied their rights be afforded the chance to enjoy a full share of the fruits of American society.
>
> Limited resources to implement educational improvements. At both the State and local levels, funds for public schools are allocated from sources which must also be used to solve problems in housing, health, income maintenance, city services and economic development. These sources are clearly not adequate for any of these needs. In Boston, where the announced property tax rate for 1971 is $156.80 per thousand valuation, the taxable property base does not include some 45 percent of the land area, which is occupied by tax-exempt users. Taxable resources—middle-class property owners and many businesses—have fled to the suburbs.

It is likely that Massachusetts is not the only State which has historically given extremely limited educational assistance for program innovation. Even where program assistance is available, it is likely that such funds are far from adequate.

The legislation now before you can become a new method of meeting the fiscal needs of local school districts which have the will, and the imagination, to solve the problem of racial isolation. It can be responsive to communities, North and South, which may differ in their approach to a solution, though not in the urgency of their need to find one. Perhaps most importantly, this bill may become the vehicle by which new vitality in meeting the commitments of Government may be demonstrated to people who are running out of patience.

Senator **Pell.** But in a city midway between yours and mine there have been racial problems, as you know.

Mr. **Parks.** Yes.

Senator **Pell.** Do you believe this bill would affect our part of the country?

Mr. **Parks.** Yes. Because one of the things, we had a chance to meet with the people on the bill earlier, and we came down hard on the fact that we have plans, and that there is enough in here to give us the flexibility to begin to get the precedent set to use some of the Federal funds to deal with the de facto problem, and I think we have to set that precedent to overcome some of the fears people have about dealing with racial isolation in the North.

The other thing I would like to say and just bring to the committee's attention is a point in my testimony, is to talk generally about it, although I don't like to talk in generalities.

We have a plan in Boston designed by the Model Cities Administration in conjunction with the Commonwealth of Massachusetts that begins to talk about a new plan, a new way to deal with the problem of racial isolation.

It is this type of plan that we are hoping will come under the structure of the dimensions of this particular bill, and I would like at this point, if I may, Mr. Chairman, to defer to Dr. Jackson, who will give a brief explanation of what we see as a plan that really speaks to the educational quality as well as the desegregation issue.

Dr. Jackson?

Dr. **Jackson.** Thank you, Mr. Parks, and Senator Pell, for giving me this opportunity, and I will try to observe and answer questions if you like.

What we have developed is what we call a partnership concept. It is not a totally new idea, but I think the way we have defined it is new.

We are talking about what school is and what education is, rather than the being of what happens to children inside of an individual school building or schoolhouse.

We are talking about their total experience. In this instance it would include children from a predominantly black school in the model cities area, and most of our schools are predominantly black, and another school predominantly white in another part of Boston.

These two groups of children who meet at a third place utilizing one of the many cultural institutions that we have in the Boston area. We think the plan is adaptable to other towns, and particularly good for a city like Boston that has these other opportunities.

It is a way to get the children into the city to begin to look at education with an integrated experience. The children would form a team along with their teachers, along with people from the museum staff, and their total educational experience would be spent together, would be planned together, by the staff and by the children and by the parents.

But it would take place in different locations. They would spend part of their time at a place like the Museum of Science, or the Elma Lewis School of Performing Arts, or at a school in their immediate area, but their total learning experiences would be integrated. I think this gives children and teachers in a community an opportunity to look at education, use new resources, new places, new materials, new people, in order to both learn basic skills, but make the educational program very exciting.

Busing is an integral part of this, but it is almost irrelevant. The children would go to school in their neighborhood and then as a group their total experiences having been planned together, would go to the other places where part of the education would take place.

We have had a tremendous response from the institutions in the Boston area that are anxious to expend their total resources so the total educational community, particularly the Museum of Science, we see this as a new way to define integrated experiences where you very consciously look at what happens to the children both within their school community and also where they are in another place, as well as, more importantly, taking advantage of a new way of educating children.

Senator PELL. Thank you very much.

What percentage of your black citizens are from the South and how many are from the Cape Verde Islands?

Mr. PARKS. We have a very small percentage in Boston. We have a larger percentage from Puerto Rico, or from Spanish speaking areas.

I don't have statistics on what the numbers are from the South. I don't really know what that influx is. But let me just say that I think the crux and it is also included in the bill, is the opportunity for the people from the community to plan with the public institutions, the school committees and the State boards of education, to plan together.

I think that is what did not happen in New Bedford. The problem of people being able to plan from the basis of how they see the problem, and negotiate that out with the public authorities, that is a very important thing, dimension, and I think the bill allows for this to happen.

The more we do this, I think the more people feel that they are able to find a way into the decisionmaking process, and the more we get people who have a share in the responsibility of the plans that come out of communities, the less the hostility will continue to be, and we have achieved that, and I think we are on the road to positive solutions.

Senator PELL. Thank you very much. In the bill we would like to see more of that type of responsibility. Thank you Mr. Parks, and your colleagues, for coming down.

We appreciate your advice here today very much.

Mr. PARKS. Thank you, Senator Pell.

Senator PELL. Our next witness is Mr. August Steinhilber, executive director of the National School Boards Association, and a very old friend of this subcommittee, too.

STATEMENT OF AUGUST STEINHILBER, EXECUTIVE DIRECTOR FOR CONGRESSIONAL RELATIONS, NATIONAL SCHOOL BOARDS ASSOCIATION; ACCOMPANIED BY MICHAEL A. RESNICK, LEGISLATIVE ASSISTANT

Mr. STEINHILBER. Thank you, Mr. Chairman. My colleague here is Mr. Michael Resnick, legislative assistant for our Association.

I am here this morning to speak on S. 3883 a bill which would provide Federal funds to assist the desegregation of our Nation's elementary and secondary schools.

More specifically the purpose of the Emergency School Aid Act of 1970 would be to pay for the special cost of desegregation, encourage elimination and prevention of racial isolation, and help minority group children in racially isolated areas to overcome the educational disadvantages which they have suffered.

The National School Boards Association is on record in its approval of a program of this kind. We believe that such a program is a promising step forward toward achieving quality educational opportunities for all the Nation's children.

On April 11, the National School Boards Association at its 1970 Annual Convention adopted the following resolution:

CIVIL RIGHTS

> The National School Boards Association urges the Congress and the President to recognize that school districts may be faced with large costs in their efforts to desegregate their systems. Often these costs cannot be borne by current Federal programs as is the case where a need exists for new facilities.
>
> To assure full access to educational opportunities for all children regardless of race, ethnic background or economic status, we urge the Federal Government to provide financial assistance to those districts which are unable to pay for these added costs.

The position of our organization is clear; we applaud the President for advancing this bill and we are grateful that this subcommittee is holding hearings, we support the basic thrust of the proposed legislation and we urge its passage.

Our association has one basic caveat to our support of this new legislation. Moneys to fund this proposed law cannot be taken from any other domestic programs whether they be administered by the Department of HEW, the Department of HUD, the Department of Labor, or the Office of Economic Opportunity.

It is our understanding from the statements of former secretary of HEW, Finch, and former Commissioner of Education James Allen that the administration has promised not to divert funds from any other program to support desegregation efforts.

Unfortunately the bill which we are discussing today had a basic defect. We believe that this defect, if enacted, would create inefficiency and confusion and invite interdistrict politics, and generally divert from the worthwhile purposes of this legislation.

Specifically I am referring to the broad, almost limitless discretion given to the Secretary of HEW to administer the program. The provisions of section 4 and section 8 respectively offer no guidance as to how much money the Secretary may award to any school district or the precise priority system for which such awards can be made.

Now let me speak to section 4.

Subsection (a) states that the Secretary shall allot from two-thirds of the appropriations $100,000 annually to each State—or $5 million annually. Of the balance of this two-thirds—or an authorized sum of $1 billion—each State receives an amount in proportion to its population of minority group children.

However by virtue of subsection b this is not formula grant. That subsection provides that the Secretary, upon determining that a State is receiving more than what is necessary to fulfill its program or project may allow what he determines to be such excess to the other

States—to the extent that he determines any excess is not created in making such an allotment.

Of the one-third, or $500 million balance subsection a states that "such sums may be expanded by the Secretary as he may find necessary to carry out the purpose of this act."

Given this discretionary language our first question is what will be its effect on the operation of the Nation's school systems.

First we envision a competition for funds developing among applicants. Since allotments of these were limited funds would in part be made by comparing the situations of perhaps several thousand school districts, it would behoove each applicant district to overstate its needs and costs of its programs.

Furthermore, in so scrambling for funds applicants would be encouraged to petition State officials as well as their representatives in Congress and the administration.

In our opinion neither overstated needs or political activity should be the barometer for measuring the amount of money that any district should receive.

It should be noted that section 7 of the bill does not insulate the program from these problems. Subsection a(5) thereof provides that applications may only be approved if the secretary, among other things, determines that the applicant is not reasonably able to provide, out of non-Federal sources, the assistance for which the application is made.

This language is far too flexible to have any meaning.

Secondly, this discretionary language frustrates effective budget and program planning at the State and local levels. The financial impact of the Emergency School Assistance Act cannot be understated.

I would like to make brief reference to the supporting tables submitted by former Secretary Finch when he appeared before this subcommittee on June 9, 1970.

All of the districts which are listed as eligible as category I districts, that is districts under a voluntary desegregation plan or under court order, are in 10 southern States and four border States.

In determining the amount for which these districts would be eligible, it must be remembered that their minority students would be double counted.

And with regard to category II Secretary Finch in his testimony stated that 55 percent of the students who would be classified as racially isolated are in 12 southern States and five border States.

From the above figures, it would appear quite likely that the 17 States referred to would share a major portion of the $1.5 billion of this 2-year program.

At the same time, for the school year 1969–70 these States had education revenue and nonrevenue receipts totaling an estimated $11.26 million of which approximately $1.1 billion was in Federal assistance.

Within this perspective, the effect of this proposed legislation on budget planning and particularly in the localities directly involved, is bound to be substantial.

Therefore this language which creates such a potentially wide and undefined gap between eligibility and actual allotments can only cause uncertainty and defeat budget accountability at the State and local level.

Thirdly, we question whether the administrators of this program can make both a timely and competent review of the programs for the more than 2,000 school districts who will be applying for immediate assistance.

In addition to administrative delays we foresee that the administrative overhead of this program at all levels of government will siphon off funds which rightfully belong in the classroom.

The question is then raised how can the legislative provisions for making allotments be structured so as to avoid the inefficiencies of interdistrict competition, frustration of budget planning, and administrative delay and overhead?

We feel that all of these problems can be greatly diminished if allotments were made either on a strict formula basis or through some type of a State plan. As to the type of formula, it would appear reasonable as section 4a of the bill suggests, to make entitlements by counting minority pupils. I would like now to refer to section 8.

A related question is that if funds are distributed to local school districts on a formula basis, what degre of control and/or discretion should the Federal Government have in determining the manner in which the funds are spent?

For the reasons which will be stated further on it is the position of the NSBA that State and local school authorities should have the final decision as to the manner of execution, provided of course that the program selected is consistent with the purpose of the act.

Therefore we are also opposed to the discretionary language of section 8. This section states that the Secretary may approve applications by giving special weight to those which contain programs or projects of his liking.

We do not understand why any one program should be categorically paramount to any other—particularly since the value of any given program would vary according to the fact situation existing in each applicant district.

Furthermore, we feel that local authorities are in a better position to judge which programs would be most effective in their particular needs. But if there must be a priority of programs and if that priority must be set at the national level it should be clearly outlined in the legislation. This will enable school boards to make more responsible and responsive policy decisions vis-a-vis Federal assistance, when they plan their annual programs.

Moreover section 8 also states that the Secretary may set an order of priority for choosing categories of applicants. We feel that if in its wisdom Congress wishes to establish some order of priority it should also specify that order.

That kind of power, particularly when dealing with a \$1½ billion program, should rest with the Legislature. Its social and financial impact is too far reaching to be a matter of administrative discretion and possible political maneuvering.

Before I make my concluding remarks, there are a few other sections of the bill which deeply concern our organization.

Subsections 5(b) and 5(a)(3) are stating that the Secretary may, in his discretion, accept applications from private institutions for programs and projects to carry out the purposes of this act.

There are several reasons why we are opposed to the direct participation of private institutions in this program. First, it should be remembered that the elimination of dual school systems and the remedial training of educationally disadvantaged pupils are basically school—public school problems.

It would therefore appear appropriate to furnish funds to—and develop programs of—public agencies since they are charged with the broader responsibility of desegregating the schools and of educating the children involved.

In addition many local school districts have made their own plans for dealing with desegregation. Therefore in bypassing the public schools and working with private institutions the bill also bypasses the efficiencies of coordinated programs and creates additional administrative costs, such as duplicating existing personnel and programs. Furthermore, we find it difficult to understand, from the viewpoint of State and local school officials, how these sections will encourage the voluntary elimination of segregation and racial isolation.

Somewhat related to the above problem is the question of whether the States should participate in the program and subsection 7(a)(2) permits States to make comments to the Secretary regarding an applicant's plan.

However, the bill does not provide for any real State participation; indeed, does not give the States the power to veto a local plan which may be either inconsistent with State policy or inefficient in the scheme of State planning.

The area of education has legally and traditionally been recognized as a State matter. In bypassing State authorities the bill could substantially alienate the personnel whose cooperation is most needed.

May I underscore that because, unless the cooperation is gained by all of these people the important business of desegregation may be lost for some time to come.

With further regard to the alienation of State authorities, it cannot help matters to condemn these authorities for effecting laws and policies which contribute to a situation and then not even grant them an opportunity, at least in the first instance, to bring about a correction.

Section 6 of the bill lists the general activities for which expenditures may be made. Although subsection (f) permits the repair or minor remodeling of existing school facilities there is no provision for the construction of new buildings.

In the past few years efforts to achieve desegregation have resulted in the closing of many substandard schools. As a result, overcrowding has occurred in these districts and they have been left with a whole complex of educational and logistical problems.

Since most cases of school closings have been initiated by court order, State and local treasuries have not been prepared to alleviate these problems.

To make matters somewhat worse for these districts as well as those which have voluntarily closed their schools, the tight money market has made school construction bonds unsalable.

To some extent the bill reaches the problem of overcrowding because it provides for the minor remodeling of closed schools. Certainly many of the closed facilities can be made educationally sound by minor remodeling.

However, we seriously doubt whether such minor remodeling can restore a dilapidated, outmoded school building to the extent that is necessary to insure the student body of such a school of the same educational opportunities as those students attending modern facilities.

We say this with the knowledge that the shabby quality of these buildings has time and again been central elements in the court's findings of fact that segregated school systems do not result in equal education.

Therefore unless these buildings are replaced, we envision much of the Federal effort in this area merely resulting only in a change of the color of some of the children who will be denied an equal education.

It should also be noted that frequently segregated pupil patterns both de jure and de facto, arise as a result of the location of school buildings. In many such areas these patterns can best be broken by the strategic placement of new schools.

Unfortunately the bill closes this option. While we would agree with the administration that this bill should not be turned into a school construction bill construction costs should be an eligible item of expense and an important proviso if it is part of an overall desegregation package.

Finally I might add that in advancing desegregation consideration should be given to the hardship which a plan might work on children and parents. Therefore, school districts should be permitted to weigh the merits of erecting a new building as an alternative to say a situation where large numbers of students will have to travel long distances for a number of years before there are sufficient local funds then for construction.

There can be no question that for these reasons—that is, overcrowding, irreparable condition of existing facilities, in an educational sense, the efficient placement of desegregated schools, and local hardships—there is a crying need for new construction.

In conclusion the purposes of S. 3883 holds a bright promise for many children whose future would otherwise slip away in substandard schools.

Whether this promise can become reality will directly depend upon the type of program which Congress writes into this law. We believe that language providing for administrative discretion to determine the amount any district would receive and to determine the priority in which districts or programs would even be funded, detracts from the viability of the bill.

We have similar private reservations regarding the manner in which the bill provides for the participation of private agencies, its effective exclusion of the States, and its failure to include funding for the construction of new schools.

We therefore urge the correction of these provisions.

Senator PELL. Thank you very much for specific and well-thought-out testimony. I am glad that in general you believe we should move ahead.

Mr. STEINHILBER. Most definitely, sir.

Senator PELL. Your suggestions are excellent and will be seriously considered. If you had your choice as we may, between moving ahead with the bill as presently written, and with Mondale-type amendments added on to it, would you support it, or oppose it?

Mr. **Steinhilber.** If it is exactly as it is presently, we could not support it.

Senator **Pell.** In other words, you feel your recommendations would have to be included in it for you to support it?

Mr. **Steinhilber.** Yes.

Senator **Pell.** I appreciate your specific recommendations. They are of help to this committee. We will take them under advisement and do the best we can to either come out with a bill that is acceptable. You again may find that if there is not enough enthusiasm for the bill, we will get bogged down.

I hope not.

Mr. **Steinhilber.** In retrospect, Mr. Chairman, I would like to underscore our support of the goals of the bill. As I was stating our official position, I kept thinking of the negative manner in which I spoke of a number of these provisions, and yet there is a crying need among many school districts which for one reason or another, normally local political reasons, they cannot get money locally to support desegregation efforts, and we encourage Congress to look toward providing this kind of funding, because the need for our children is so great.

Senator **Pell.** Obviously we will not be able to take all your suggestions, but we hope in the end to come out with a bill that you could support, because of the regard we have for your association, and the help this committee has received in the past from you, which has been very valuable to us.

Thank you very much, indeed.

(The following material was subsequently supplied for the record:)

National School Boards Association,
Washington, D.C., September 10, 1970.

Hon. Claiborne Pell,
U.S. Senate,
Washington, D.C.

Dear Senator Pell: Recently when we testified before your Subcommittee on S. 3883 the Emergency School Aid Act, you asked if we would oppose the bill in its present form. My answer was that we would oppose it because of our fear of the broad discretion language contained in that legislation. Future events, namely the promulgation of rules for the Emergency School Assistance Program on page 13442 of the Federal Register of August 22, have underscored our fears. Quite frankly had we known in advance the scope of these regulations, we would have opposed the additional $75 million appropriation for desegregation contained in P.L. 91–380 and as you recall we were one of the leading proponents for this appropriation item.

As for specific objections on the regulations, first concerns the unilateral manner in which they were developed. The National School Boards Association was not even consulted during their development. I have double checked with all of the major education associations namely the National Education Association, American Association of School Administrators, and the Council of Chief State School Officers. Their officials have likewise indicated a complete lack of involvement on this one of the most critical issues facing American education.

Another aspect of the regulations which astounds us is their apparent disregard for Title IV of the Elementary and Secondary Education Amendments of 1967 as amended by P.L. 91–230. Section 421 is completely disregarded with respect to the thirty (30) day delay requirement between publication in the Federal Register and final effective date. This section is largely emasculated with respect to the requirement that all regulations contain citations to their legal authority. Instead of justifying regulations in terms of specific legislative intent, the citations given in most regulations are boiler plate references. Section 181.7 of the new regulations contains no citation at all. Most of the other sections contain identical citations. May I use one example to illustrate this point. One citation to the Education Professions Development Act—20 U.S.C. 1119–1119a—appears ten (10) times in the regulation. It is used as legal authority to justify regulations requiring student advisory committees be set up in each and every school in a district affected by any desegregation project. We really doubt if the Education Professions Development Act was ever considered by Congress to justify such a specific requirement.

The regulations also require local school districts to select at least five (5) local organizations to review desegregation efforts. A number of specific organizations are specified as ones which "should ordinarily be among those selected." Those specified organizations include Community Action Agencies and City Demonstration Agencies. Congress has always striven to have broad local involvement in education, a position which the National School Boards Association has likewise supported, but to my knowledge no where has local school districts been required by federal law to recognize and delegate governmental responsibilities to specific organizations.

The new regulations may be in violation of Section 422 of the General Provisions Concerning Education. They certainly exercise direction over the program of instruction, administration and personnel of a school system. At best the Department of HEW has considered the prohibition against federal control of education in its most narrowest sense and often this kind of restrictive language has been completely ignored as excessive verbiage.

Sincerely yours,

August W. Steinhilber,
Director, Federal and Congressional Relations.

Senator Pell. Our next witness is Mr. Carl Megle, director of legislation for the American Federation of Teachers.

STATEMENT OF CARL J. MEGLE, DIRECTOR OF LEGISLATION, THE AMERICAN FEDERATION OF TEACHERS

Mr. Megle. Thank you.

Senator Pell. We welcome you here, Mr. Megle, and proceed as you will.

Mr. Megle. Thank you, Mr. Chairman.

My name is Carl J. Megle. I am the legislative director of the American Federation of Teachers, a national teachers union of more than 200,000 classroom teachers affiliated with the AFL–CIO.

It is a privilege for me to appear here before this committee to present the views of the American Federation of Teachers in reference to S. 3883, a bill designed to aid school districts and meet special problems incident to desegregation in elementary and secondary schools.

The American Federation of Teachers has a proud record in support of integrated education. The amicus curiae brief which we filed with the Supreme Court in 1954 was followed by an American Federation of Teachers convention resolution which required integration of all of our segregated locals, a directive which became an accomplished fact by the end of 1957.

Unfortunately the rate of school integration has proceeded at a much slower rate. Accordingly there is a legitimate and urgent need for a carefully defined Federal assistance program to aid school districts to complete school integration.

However, integration for the sake of integration alone is only a partial educational solution and becomes truly meaningful when accompanied by quality education.

Therefore our emphasis must be directed toward a goal of quality integrated education. In this area we maintain that one of the bars to quality integrated education for both students and staff is the lack of proper compensatory programs and facilities in schools of high student enrollment.

While any efforts to effect full integration within our schools are commendable, we're concerned because the bill is directed only incidentally toward elimination of the indisputable public school needs, and the shortage of fully qualified teachers, and the outmoded physical plants.

These are the basic deficiencies which burden our children with inferior educational opportunities. Inferior in that they fail to prepare for living in this advanced age. The advance of technology and automation have generated a need for profound changes in our educational program if we are to achieve equalized educational excellence in the schools throughout our Nation.

S. 3883 authorizes the Secretary for Health, Education, and Welfare to approve plans which involve compensatory education programs. Quality integrated education cannot become effective without compensatory programs based upon the total school improvement approach used in the MES program which the AFT has pioneered for many years.

In the best of schools teaching is hard enough. Without the education staff provided under compensatory programs teachers will have difficulty in achieving success and satisfaction and hence are apt to be driven off to other teaching jobs or to seek other careers.

S. 3883 authorizes the appropriation of $1½ billion to be appropriated for carrying out this act. Moreover the allotment among the States as outlined in section 4 would limit funds to only those districts which are under court order or HEW directive.

This limitation means that with few exceptions only schools of southern districts would qualify for this money. It is true that HEW has directed a few northern cities to integrate; yet it is also true that HEW has not been able to investigate all de facto situations in the north.

For this reason we propose that the sum authorized to be appropriated then be at least doubled and that any school district anywhere in the United States that wishes to submit an integration plan either to overcome de jure or de facto segregation of its school system shall be eligible too for funds.

Irrespective of the total number of dollars eventually authorized to be appropriated, it must be clearly stated that none of the funds shall be obtained by transfer from any other program now in effect.

It occurs to us that the $1½ billion authorized in this legislation is almost identical to the allocations under the ESEA act, title I.

Transfers of any of these funds from title I would represent a grave error. We strongly urge that this legislation clearly specify that any authorized funds be appropriated in addition to any and all existing funding.

Moreover if the double accounting provision is included then certainly any school district which conforms to an approved integration plan should qualify for double accounting for those minority children who according to the plan were actually moved from a segregated into an integrated system.

In so doing school districts which desegregate their schools but fail to integrate classes should be denied assistance of any kind.

An obvious weakness of the bill is that it relies on its incentive features to secure good faith performance by public officials. In fact, it rewards those school districts which have extended the least effort to eliminate segregation within their school systems.

We believe that the allocation of one-third of the appropriated sums to the Secretary of Health, Education and Welfare to be expended as he may find necessary or appropriate to be extremely unwise.

Public officials who violate the law should be held responsible by the proper authorities.

The Health, Education, and Welfare Secretary possesses punitive powers only through withholding of funds which negates the intent of the legislation to encourage integration of school systems.

Moreover vesting all power in the Secretary of Health, Education, and Welfare bypasses the Commissioner of Education and is counter to general procedure of all other federally funded education programs.

We strongly urge that if the Congress should decide to enact this legislation that it should do so only after it has established and included strict guidelines, criteria and allocations in order to reduce to a minimum the discretionary powers of the Secretary of HEW in order to avoid the legislation becoming a political grab bag.

Moreover, we have strong convictions that all necessary implementation of this act can and should be accomplished through the existing public school system. We would strongly urge deletion of paragraph (b) under article 3 of section 5.

To bypass the authorized public school system through grants or contracts with any public or private agency could not guarantee the desired quality integrated education program but instead would most surely degrade the existing public school system.

While any effort to effect complete integration of our student population is commendable, we continue to believe that the basic answers to the problems facing American education is through expansion of general Federal aid in an amount which will eliminate the indisputable public school needs. Specifically we have in mind proposals outlined in S. 2950. Hearings for this legislation are still pending before this subcommittee.

We strongly support authorizations which provide for additional teachers to reduce the teacher-pupil ratio. We recommend remedial and other services in order to meet the special needs of children affected by the planned-for integration.

Moreover teachers must have a definite role in planning and drawing up any integration program. The orientation must not be completely from an administrative point of view.

Since authorizations for public information have already been specified in Public Law 91-230, section 110, we recommend similar inclusions in the proposed legislation.

We appreciate the opportunity to appear before this committee. We sincerely thank the chairman for the courtesy which he has extended to us in making it possible to testify.

Senator PELL. Thank you. As I understand it, the AFT supports this legislation, but would like some changes made. If we were faced with the choice of passing it or not passing it as presently written, with the addition of Mondale type amendments, would you support its passage, rather than not?

Mr. Megel. The American Federation of Teachers strongly believes that the fragmentation of these educational programs cannot produce the best results. It is for this reason that the American Federation of Teachers commissioned the distinguished economist Leon Keyserling to prepare a comprehensive study of nationwide educational needs. From this study we prepared and introduced a most comprehensive educational legislative program, which we hope the Congress in some future day will seriously consider. To have impacted aid, to have ESEA, to have desegregation legislation, to have NDEA and other educational aid by the Federal Government will not bring the best results.

However, to answer your question, if the Mondale amendments are added and if specified lines are included as suggested in our testimony, and if in addition teachers and the community are allowed to participate in formulating programs, we would support the legislation.

Senator Pell. Thank you.

In this connection, the NEA, has supported the basic bill, and also we received a statement from the AFL-CIO in support of the basic thrust. Both have added to the chances of passing this bill. There will be more hearings and discussions concerning the material.

TREATMENT OF BLACK TEACHERS

Much comment had been made about the teachers in the South with regard to the black teachers being transferred and sometimes fired because of desegregation.

Can you make any comment on this?

Mr. Megel. Yes, indeed. This is a just criticism. The American Federation of Teachers does not have a large membership in the South because of our pioneering position on integration. In 1934 here we placed a black person on our executive council, and have continuously done so. In 1956, by convention action, we required all of our black and white separate locals to integrate. For these reasons we have not been able to secure the organization of teachers in the South to any great extent.

Senator Pell. Do you have any members in the Deep South?

Mr. Megel. Yes; we have locals in New Orleans, Atlanta, Chattanooga and Birmingham.

Senator Pell. With black members?

Mr. Megel. Practically entirely because when we required integration of our locals most of our white teachers withdrew, so that all we had left were the black teachers.

We now have a growing integrated local in New Orleans. We know black teachers have been discriminated against in the process of integration.

Senator Pell. Do you have anything to submit of specific instances along this line?

Mr. Megel. I think I can.

Senator Pell. I would appreciate that very much.

Mr. Megel. I will be glad to try to supply such information.

Senator Pell. As you do that, try to make sure that these are bona fide examples of unfairness, and that there are not differences in quality, which is often cited as the reason.

Mr. Megel. May I add this statement also?

In many areas in the South, the black teachers were better qualified than the white teachers. They had to be better qualified to get a job, and a great many of them had master's degrees. They were employed because they had the advance degrees. Therefore many of them were better qualified than the white teachers, and some of these black teachers are now being discriminated against.

LINGUISTIC ISOLATION

Senator **Pell**. I think one of the problems here is that many sections of the country there are almost two languages being spoken, and with integration I hope we could achieve a single language without the differences between geographical areas, which is too often the case.

TRANSFER OF ASSETS

Do you have any knowledge of the transfer of private assets to private schools?

Mr. **Megel**. I have no specific instances that I can report. I may be able to secure facts on this item.

Senator **Pell**. If you do we would welcome it. In any case, we welcome the instances of unfair treatment of black teachers.

Thank you, for coming, and at this point the subcommittee will recess its hearings to the call of the Chair.

(Whereupon, at 11:50 a.m. the subcommittee adjourned, subject to the call of the Chair.)

EMERGENCY SCHOOL AID ACT OF 1970

THURSDAY, AUGUST 27, 1970

U.S. Senate,
Subcommittee on Education
of the Committee on Labor and Public Welfare,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Senator Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senators Pell, Eagleton, Javits, and Schweiker.

Subcommittee staff members present: Stephen J. Wexler, for the subcommittee.

Senator Pell. This hearing of the Subcommittee on Education on S. 4167, the National School Desegregation Act of 1970, introduced by Senator Spong, will come to order.

This hearing has been scheduled as a portion of our continuing study of certain desegregation problems, in light of the administration's proposal, S. 3883, the Emergency School Aid Act of 1970.

By his introduction of S. 4167, Senator Spong has brought to public attention the very real concerns of those both in and out of the Government as to the future course of action which the Federal Government should pursue if it is to succeed in its aim of equal education for all children. Indeed, the goal appears to be the same, it is the various methods to achieve that goal—with their different underlying philosophical bases—which are now sparking controversy.

Today's hearing on this bill will, I believe, be most useful, for it will crystalize in the minds of the subcommittee members the many questions and attitudes which come into play when we discuss this type of measure.

I look forward to hearing from Senator Spong, who will be our first witness, and order to be printed in the record at this point a copy of the bill and a section-by-section analysis.

(The bill, S. 4167, the analysis of the bill, and departmental reports follow:)

91st CONGRESS
2d Session

S. 4167

IN THE SENATE OF THE UNITED STATES

August 3, 1970

Mr. Spong introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

---

A BILL

To enforce the guarantees of the fourteenth amendment with respect to the desegregation of public elementary and secondary schools.

Whereas the fourteenth amendment forbids the segregation of children in the public schools solely on the basis of race; and

Whereas the Congress has the authority and the duty to enforce the fourteenth amendment by appropriate legislation; and

Whereas section 5 of that amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the fourteenth amendment: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

II

That this Act may be cited as the "National School Desegregation Act of 1970".

SEC. 2. Segregation is the separation of children of different races in the public schools pursuant to provisions of applicable law, or by action of persons exercising administrative authority over the public schools, where such action is intended to achieve the separation of children solely on the basis of race, and has that effect.

SEC. 3. (a) Any student in any public school shall have the right at the beginning of any school year to transfer from a school to which he has been assigned or would in the regular course be assigned, in which his race is in a majority, to a school in which his race is in a minority: *Provided*, That the exercise of such right may be postponed for a reasonable period of time while the most rapid feasible effective measures are taken to alleviate conditions of overcrowding in the school to which transfer is requested: *And provided further*, That the school to which transfer is requested offers education in the grade equivalent to that from which the student transfers.

(b) Transportation which may be required to effectuate the right of transfer under this section shall be provided.

(c) Any person or persons alleging that the right established in subsections (a) and (b) of this section has been denied to him or her individually or to a class of which he or she is a member, or the Attorney General, if he has reasonable cause to believe that any person or class of persons have been denied such right, may bring a civil action in the appropriate district court of the United States for equitable relief, including an application for a permanent or temporary injunction, or other order.

(d) In any action commenced under this section, the court may allow the moving party or parties, other than the United States, a reasonable attorney's fee as part of the costs, if such party or parties prevail in the action.

SEC. 4. Where there are students of a particular race, color, or national origin concentrated in certain schools or classes, school boards shall insure that these students are not denied equal educational opportunities by practices which are less favorable for educational advancement than the practices at schools or classes attended primarily by students of any other race, color, or national origin. Examples of disparities between such schools and classes which may constitute a denial of equal educational opportunities include—

(A) comparative overcrowding of classes, facilities, and activities;

(B) assignment of fewer or less qualified teachers and other professional staff;

(C) provision of less adequate curriculums and extracurricular activities or less adequate opportunities to take advantage of the available activities and services;

(D) provision of less adequate student services (guidance and counseling, job placement, vocational training, medical services, remedial work);

(E) assigning heavier teaching and other professional assignments to school staff;

(F) maintenance of higher pupil-teacher ratios or lower per pupil expenditures;

(G) provision of facilities (classrooms, libraries, laboratories, cafeterias, athletic, and extracurricular facilities), instructional equipment and supplies, and textbooks in a comparatively insufficient quantity;

(H) provision of buildings, facilities, instructional equipment and supplies, and textbooks which, comparatively, are poorly maintained, outdated, temporary, or otherwise inadequate.

SEC. 5. (a) All persons exercising administrative authority under the laws of a State or of the United States over public schools have the affirmative duty to eliminate segregation or any other discrimination based solely on race in public schools subject to their authority, and to correct the present effects of past segregation or other discrimination based solely on race.

(b) A public school is organized and administered in compliance with the Constitution and laws of the United States when all persons exercising administrative authority over it—

(1) have in good faith discharged their affirmative duty under subsection (a), provided that the question of good faith shall be treated as a question of fact by courts of the United States adjudicating suits brought under the Constitution or laws of the United States, and by duly authorized officers of the United States implementing title VI of the Civil Rights Act of 1964, and shall be decided by them, having regard to the criteria set forth in this Act; and

(2) have insured that the school system or systems subject to their authority are unitary school systems, as defined in section 5 of this Act.

SEC. 6. For the purposes of this Act—

(1) The term "unitary school system" means one in which—

(A) the requirements of section 2, subsections (a) and (b), and of section 3 of this Act have been met;

(B) school activities are open to all pupils and faculty and staff, without segregation or any other discrimination based solely on race;

(C) subject to the provisions of section 2 of this

Act, each child attends the school nearest its place of residence, or the ratio of racial minority to racial majority pupil population in each school is within 50 per centum to 150 per centum of the percentage representing the proportion which the number of students of a minority race bears to the entire pupil enrollment in a system administered by a school board, where the geographical boundaries of the system are themselves not determined on the basis of racial considerations of any sort: *Provided, however,* That variances from a policy of assigning each child to the school nearest to his place of residence may be made—

(i) to the extent necessitated by variations in the availability of programs suited to the needs of the child, school capacity, traffic conditions, and other considerations of ease of access;

(ii) pursuant to measures put into effect by a school board or other persons exercising authority over public schools under the laws of a State, the District of Columbia, or a territory of the United States, where such measures are intended to achieve better racial balance in the school population, and have that effect; and

(iii) pursuant to measures put into effect by a school board or other persons exercising authority over public schools under the laws of a State or of the United

States, where such measures are intended to prevent the resegregation of a school, and have that effect.

(2) Variances provided for in paragraph (c) (i) of this section shall be lawful only if they result in the assignment of children to public schools or within such schools without regard to their race. Variances provided for in paragraphs (c) (ii) and (c) (iii) shall be lawful only if they form part of policies pursued in good faith to achieve better racial balance or to prevent resegregation. The question of good faith shall be treated as a question of fact by courts of the United States in the course of adjudicating suits brought under the Constitution or laws of the United States, and by duly authorized officers of the United States implementing title VI of the Civil Rights Act of 1964: *Provided, however,* That school boards or other persons exercising authority over public schools who shall put into effect variances intended to prevent resegregation shall have the burden of proof in showing their good faith intention to do so.

(3) The terms "public school" and "school board" shall have the same meaning as prescribed in section 401 (c) and (d) of the Civil Rights Act of 1964.

SEC. 7. (a) Any person or persons alleging, or the Attorney General if he has reasonable cause to believe, that any policy or measure, adopted by a school board or other person or persons exercising administrative authority over a school or schools in a system which is otherwise a unitary one, was intended to achieve the separation of children solely on the basis of race, and has had that effect, may bring a civil action in the appropriate United States district court for equitable relief, including an application for a permanent or temporary injunction, or other order. The court shall rescind such policy or measure, and shall order affirmative action to be taken to cure present effects still directly attributable as having been caused by such policy or measure.

(b) In any action commenced under this section, the court may allow the moving party, other than the United States, a reasonable attorney's fee as part of the costs, if such party or parties prevail in the action.

(c) Any policy or measure found by an officer of the United States duly authorized to implement title VI of the Civil Rights Act of 1964, to give rise to a cause of action under this section, shall be found by him to be a violation of said title VI, even though suit has not been brought in a court of the United States under this section. The violation shall be deemed to have terminated upon application by the school board, or other person responsible, of the remedy that a court would apply under subsection (a) of this section.

JENNINGS RANDOLPH, W. VA., CHAIRMAN
STEPHEN M. YOUNG, OHIO
EDMUND S. MUSKIE, MAINE
B. EVERETT JORDAN, N.C.
BIRCH BAYH, IND.
JOSEPH M. MONTOYA, N. MEX.
WILLIAM B. SPONG, JR., VA.
THOMAS F. EAGLETON, MO.
MIKE GRAVEL, ALASKA
JOHN SHERMAN COOPER, KY.
J. CALEB BOGGS, DEL.
HOWARD H. BAKER, JR., TENN.
ROBERT J. DOLE, KANS.
EDWARD J. GURNEY, FLA.
ROBERT W. PACKWOOD, OREG.

RICHARD B. ROYCE, CHIEF CLERK AND STAFF DIRECTOR
J. B. HUYETT, JR., ASSISTANT CHIEF CLERK
M. BARRY MEYER, COUNSEL

United States Senate
COMMITTEE ON PUBLIC WORKS
WASHINGTON, D.C. 20510

August 5, 1970

The Honorable Claiborne Pell
United States Senate
325 Old Senate Office Building
Washington, D. C. 20510

Dear Claiborne:

As you know, I introduced a bill, S. 4167, to establish a national school desegregation policy, on August 3, 1970.

As printed, there are four inaccuracies on page 5. In line 15, the reference should be section "6", not section "5". In line 19, the reference should be to section "3" rather than "2". In line 20, the reference should be to section "4", instead of "3". And, in line 24, the reference should be to section "3". I am attaching a copy of the bill, with the necessary corrections included.

I am, of course, most hopeful that we can have action on this legislation since the problems facing many of our school districts are both crucial and immediate. Please let me know if I can be of any assistance to you or your committee.

With kind regards.

Sincerely,

William B. Spong, Jr.

MAJOR PROVISIONS OF S. 4167

The preamble notes that the Fourteenth Amendment to the Constitution forbids the segregation of school children by race and that Congress has the authority and duty to enforce the Amendment by appropriate legislation.

SECTION 1 specifies that the bill will be called the "National School Desegregation Act of 1970."

SECTION 2 defines segregation as "the separation of children of different races in the public schools pursuant to provisions of applicable law, or by action of persons exercising administrative authority over the public schools, where such action is intended to achieve the separation of children solely on the basis of race, and has that effect."

SECTION 3 establishes a national right for any child attending a school in which his race is in a majority to transfer to a school in which his race is in a minority. Provision would be made for transportation necessary to carry out the transfer. Procedures would be established for bringing civil suits, initiated by individuals or the Attorney General of the United States, to insure this right.

SECTION 4 states that efforts shall be undertaken to insure that there are no disparities among schools in terms of facilities, curriculum, teacher-pupil ratios, student services, textbooks, etc.

SECTION 5 specifies that all public school personnel have the affirmative duty to eliminate segregation and discrimination by race.

SECTION 6 defines a unitary school system as one in which (1) the conditions specified in Sections 3 and 4 have been met; (2) school activities are open to all pupils, faculty and staff; and (3) subject to the provisions of section 3, each child attends the school nearest his home, i.e., his neighborhood school, or the ratio of minority pupils to majority pupils in a school does not vary more than 50 to 150 percent from the ratio of minority to majority pupils in the entire school district.

Variations from the policy of assigning a child to the school nearest his home are permitted (1) if necessitated by availability of programs (2) if undertaken voluntarily by a school board to achieve a better racial balance or (3) if undertaken by a school board to prevent resegregation.

Variances are lawful only if they are pursued in good faith to achieve better racial balance or prevent resegregation.

SECTION 7 authorizes civil actions in cases where individuals or the United States Attorney General have cause to believe local school authorities have acted contrary to the provisions of Section 6.

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

STAFF DIRECTOR

AUG 28 1970

Honorable Ralph W. Yarborough
United States Senate
Washington, D. C. 20510

Dear Senator Yarborough:

This is in response to your request for our comments on S.4167, The National School Desegregation Act of 1970, introduced by Senator Spong. Our comments are included in the attached memorandum to me from John H. Powell, Jr., General Counsel of the Commission.

As the memorandum indicates, we have severe reservations about the bill and would recommend strongly that it not be enacted. It creates a Federal system of "neighborhood" schools, which tend to be segregated in fact and it proposes to remedy intentional segregation by the least effective method -- the right of individual transfer by Negro pupils, which would be enforceable through litigation.

I hope our views will be of service to you in your deliberations on S.4167.

Sincerely,

Howard A. Glickstein

HOWARD A. GLICKSTEIN

Enclosure

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

DATE: August 21, 1970

REPLY TO ATTN OF: OGC

SUBJECT: Analysis of S. 4167, The National School Desegregation Act of 1970 Introduced by Senator Spong

TO: Howard A. Glickstein
Staff Director

This memorandum is an analysis and critique of S. 4167, The National School Desegregation Act of 1970, a bill to enforce the guarantees of the Fourteenth Amendment with respect to the desegregation of public elementary and secondary schools. Part I consists of a section-by-section analysis immediately followed by relevant comments. Part II consists of general observations applicable to the bill as a whole.

I. Preamble:

The preamble states that this bill is based on congressional power to enforce the guarantees of the Fourteenth Amendment.

Comment:

On the basis of our analysis of this bill -- namely, that it would restrict rather than enforce Fourteenth Amendment rights -- there is some question as to whether it constitutes an appropriate exercise of Congressional power under that amendment. (See Part II of this memorandum.)

Section 1

There is no Section 1.

Section 2

Defines segregation as the separation of children in the public schools on the basis of race pursuant to law, or by the action of school administrations where the intent is to separate solely on the basis of race and which has that effect.

Comment:

The first part of this definition -- separation pursuant to law -- has no practical effect, since no jurisdictions retain on their books any statutes which require such separation. The second part of the definition excludes some aspects of *de jure* segregation due to State action: where it is the result of State action through State officials who are not school officials; where *de jure* segregation is the result of official inaction; and where it is the result of official action designed *in part* to segregate pupils.

The first omission is particularly unfortunate, since the State can act to segregate children on the basis of race through a variety of means other than the action of school administrators. This has been recognized in several court decisions which found the existence of *de jure* segregation in such cases, as *Swann v. Charlotte Mecklenburg Board of Education*, 300 F. Supp. 1358 (W.D. N.C. 1969), *Spangler v. Pasadena City Board of Education, et. al.*, Civil No. 68-1438-R (C.D.Ct. Cal.) Jan. 22, 1970.

The definition also places a very heavy burden of proof on plaintiffs, who have to show that official action was designed to separate pupils *solely* on the basis of race and that it has that *effect*.

This definition appears to be designed principally to exclude school board responsibility for adventitious school segregation. It is unfortunate that a Federal statute should restrict the courts from developing their own definition of "segregation," which might include *de facto* segregation.

Section 3

(a) Provides that at the beginning of the school year, any student can transfer from a school where his race is a majority to a school where it is in the minority (provided that the same grade is taught in both schools).

The right to transfer may be postponed for a reasonable time while the most rapid feasible plan to overcome overcrowding in the receiving school is devised.

(b) When transfers require transportation, it will be provided.

(c) A private individual or the Attorney General may sue to enforce the right of free transfer and free transportation as set out in 2(a) and (b).

(d) If the moving party, other than the U.S., prevails, the court may grant him reasonable attorney's fees.

Comment:

This Section gives a Federal right to transfer from a school in which a pupil's race is in the majority to one in which it is in the minority. Although the bill does not state that this right is exclusive, many school systems have far more liberal transfer provisions right now. Presumably, the restriction on transfers is designed to prevent white pupils from transferring out of majority Negro schools. Nevertheless, this device does not seem to be an effective one for achieving desegregation because:

--the bill places the total burden of desegregation on parents and children, the people least able to sustain this burden;

--realistically, this burden rests only on minority group parents, since white pupils are not likely to transfer from majority white to minority white schools;

--in addition, the bill makes the right to transfer extremely contingent, since it may be blocked as long as the school to which transfer is requested is "overcrowded" (not defined) and the school system is attempting to "alleviate" this condition.

The right to transfer has always been viewed as only one of many devices to be used to desegregate schools. In many cases, it has been found to be an ineffective device (see U.S. Commission on Civil Rights, Southern School Desegregation, 1966-67 (1967)). For this reason, the Supreme Court in Green v.New Kent County School Board, 391 U.S. 430 (1968) required that freedom of choice may only be the tool for desegregation if it gives real promise to be effective and if no alternative means are readily available. Id. at 440-41. To restrict Federal protection of the right of Negro children to attend equal schools to their right of "free choice" seems to single out a device which has generally shown its weakness.

There are also problems raised by the drafting of this Section. The bill, as drafted, does not specify that the right to transfer is only to another school in the same school district. This is an important omission, since in the absence of such a restriction transportation may be payable to transferees to suburban schools or even to another city. For example, it is conceivable that a Washington, D.C. pupil may have a right to transfer to a school in California under this Section and that transportation has to be paid for his travel. However, this bill is so poorly drafted throughout that it is difficult to assume that the omission is not inadvertent.

This Section, like other sections of the bill, can only be enforced by litigation. This is a slow and cumbersome procedure. This remedy seems particularly inappropriate for a simple matter like the transfer of one child from one school to another.

Section 4

Provides that when there are racial, color, and national origin concentrations of students in certain schools, school boards must insure that these students are not denied equality of educational opportunity by practices which are more favorable for educational advancement than the practices at schools attended primarily by students of a different race, color, or national origin.

The following are examples of disparities between such schools and classes which may constitute a denial of equal educational opportunities:

(A) Comparative overcrowding of classes, facilities and activities;

(B) assignment of fewer qualified teachers and other professional staff;

(C) provision of less adequate curriculums and extra-curricular activities or less adequate opportunities to take advantage of the available activities and services;

(D) provision of less adequate student services (guidance and counseling, job placement, vocational training, medical services, remedial work);

(E) assigning of heavier teaching and professional assignments to school staff;

(F) maintenance of higher pupil-teacher ratios or lower per pupil expenditures;

(G) provision of comparatively insufficient facilities (classrooms, libraries, laboratories, cafeterias, athletic and extra-curricular facilities), instructional equipment and supplies, and textbooks;

(H) provision of buildings, facilities, instructional equipment and supplies, and textbooks which, comparatively, are poorly maintained, outdated, temporary, or otherwise inadequate.

Comments:

This Section attempts to set forth Federal standards for equal schools. It does not define when students of a "particular race" are "concentrated" in "certain schools or classes."

The examples of inequality are based on HEW's 1968 Title VI guidelines. The language of the guidelines was adopted wholesale without considering whether it is appropriate for a statutory requirement. Broader language, requiring exact equality, would be more appropriate.

This Section seems to prohibit compensatory education programs, perhaps again, inadvertently.

There is no provision in the bill designed to enforce this Section.

Section 5

(a) imposes an affirmative duty on all persons who exercise administrative authority under Federal or state law over public schools to eliminate segregation or discrimination based solely on race and to correct the present effects of past segregation or discrimination based solely on race.

(b) A public school is in compliance with the Constitution and with Federal law when all persons in administrative control over it:

(1) have affirmatively eliminated in good faith segregation or discrimination based solely on race and corrected the present effects provided that the "good faith" question is treated as a question of fact by /1/ U.S. courts in suits brought before it under the Constitution and /2/ Federal law officers of the United States implementing Title VI of the Civil Rights Act of 1964.

(2) have insured that these schools are operating a unitary system as defined in Section 6.

Comments:

This Section places an affirmative duty on administrators to eliminate segregation based solely on race. However, this duty is practically nullified by succeeding exceptions and qualifications. Basically, their duty is satisfied if they operate a system of neighborhood schools with free transfer and transportation options. The bill does not impose on school officials any duty to integrate schools. The extent of integration will be determined by residential patterns and individual initiative.

The relevance of "good faith" to the implementation of Fourteenth Amendment rights is unclear. Court decisions dealing with adventitious segregation have considered whether officials acted in "good faith" to determine whether they were faced with intentional segregation. That standard--which is in the nature of an evidentiary ruling--should not be enacted into Federal law. Decisions dealing with the disestablishment of dual systems under Brown have also considered "good faith" in determining whether school officials were proceeding with deliberate speed. Both of these lines of decision have been subject to much criticism. Since this bill expressly excludes *de facto* segregation from its coverage and since its requirements for affirmative action by school officials seem minimal, there seems to be no reason to consider the good faith of officials in the context of compliance with its requirements. The general rule of decisions under the Fourteenth Amendment has been to consider the result of State action, not the intention of the officials involved. *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) *Baker v. Carr*, 393 U.S. 186 (1962).

Section 6.

For the purposes of this Act--

(1) The term "unitary school system" means one in which--

(A) the transfer and transportation provisions of § 3(a)(b) are met and separate schools are equal.

(B) school activities are open to all pupils, faculty, and staff without segregation or discrimination based solely on race.

(C) subject to the transfer and transportation sections of this Act (§ 3), each child attends his neighborhood school, *or* [emphasis added]

the ratio of racial minority to majority students in each school is within 50 to 150% of the percentage of that minority group in the district as a whole, where the geographical boundaries of the district are not determined on the basis of race. Provided, however, the school board may make variances from the assignment of students to the neighborhood school when:

(i) it is necessary because of the availability of programs suited to the needs of the child, school capacity, traffic conditions and other considerations of ease of access;

(ii) it seeks to achieve better racial balance and is effective to that end;

(iii) it seeks to prevent segregation and is effective to that end. The permissible variances just discussed are lawful only when variances for ease of access result in the assignment of pupils without regard to race and when variances to achieve racial balance are part of a good faith effort to achieve better balance and to prevent racial segregation.

The issue of "good faith" is a question of fact to be decided by a court or a U.S. official implementing Title VI of the Civil Rights Act of 1964, provided, however, that a school board that has put into effect variances intended to prevent resegregation has the burden of proof to show its good faith intention to do so.

For the purposes of this Act the terms "public school" and "school board" are used as they are used in Section 401 of the Civil Rights Act of 1964. 1/

1/ Section 401(c) of the Civil Rights Act of 1964 provides that: "Public School" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

Section 401(d) provides that: a "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

Comment:

The definition of "unitary" school system is at best unclear. This Section seems to require neighborhood schools, subject to various exceptions. Why should Federal law require that each child attend the nearest school?

The variances are so broad as to permit any kind of exception the school board desires.

This Section is so unclear that it is difficult to discuss what its effect would be. The proposed alternative to neighborhood assignments is particularly confusing. It implies that a school attended by children living in the neighborhood may be all black or all white. However, any departures from that system must result in schools which reflect roughly the racial composition of the district. Thus, if a district is 30 percent black, each non-neighborhood school must be no less than 15 and no more than 45 percent black. If a district is 50 percent black, non-neighborhood schools must be 25 to 75 percent black. What is the basis for requiring racial balance in some schools and not in others, and what is the justification for allowing such wide latitude in achieving racial balance, where it is required?

The clauses providing for exceptions from Section 6(1) add to the confusion. If children are not assigned to their neighborhood schools for reasons of administrative convenience or to achieve better racial balance or to prevent segregation, does the ratio requirement apply to the schools they attend? If not, to which schools does it apply?

This section also contains a requirement for "good faith" on the part of school officials. Again, the relevance of good faith is unclear in this context.

Section 7

(a) provides that if any person or the Attorney General has reasonable cause to believe that in an otherwise unitary school system any administrative policy or measure was intended to achieve racial separation of its students, he may bring a civil action for equitable relief, including a temporary or permanent injunction, or other order.

(b) if the moving party other than the U.S. prevails, the Court may grant him reasonable attorney's fees.

(c) a violation of this Section if found by an officer of U.S. implementing Title VI of the Civil Rights Act of 1964 is a violation of said Title VI. A suit does not first necessarily have to be brought in a U.S. Court under this Section.

Comment:

This Section gives a Federal right of action against intentional school segregation. There is already such a right under the Fourteenth Amendment and Federal statutes.

(c) This section requires Title VI enforcement to be consistent with judicial enforcement of this law's standards.

II. General Observations

The obscurities and poor drafting of this bill cannot mask its underlying purpose -- namely, to restrict school desegregation to the absolute minimum required by Brown v. Board of Education. The bill requires courts and Federal officials enforcing Title VI of the Civil Rights Act of 1964 to accept as in compliance with the Constitution any school assignment plans under which children attend their neighborhood schools, with the option to transfer, subject to the availability of space. The bill preserves a local option for more effective desegregation but makes it clear that the Federal government will not require such action.

On the basis of nearly sixteen years of experience with freedom of choice plans, coupled with what is common knowledge concerning the prevalence of residential segregation, it is impossible to conceive how Congress could reasonably find that these measures will promote desegregation. The statute not only sets standards below those set by the Courts and executive action under Title VI, it institutionalizes enforcement devices known to be the least effective to achieve the purposes of the Fourteenth Amendment. The Fourteenth Amendment is not a grant of power to Congress to abridge minority rights; and in this case, its invocation in the preamble is a mockery of its purposes. Such a law can only act as an incentive to local school boards to segregate children by assigning them to neighborhood schools. The Federal government cannot put its "prestige and power" behind a system that can only result in segregated schools. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

Further evidence of the intent of the bill is found in the fact that it does not create any new Federal rights except the right to transfer.

The right to sue to prevent intentional discrimination or segregation is already in existence. The statute does not specifically provide a right to relief when a school system is not "unitary" or where separate schools are not equal.

The statute does not deal with teacher desegregation. The statute (generally poorly drafted) is inconsistent in its treatment of ethnic discrimination. The terms "color" and "national origin" appear in some sections and not in others.

Finally, S.4167 introduced by Senator Spong is almost exactly the same as H.R. 16484 introduced by Congressmen Preyer and Galifianakis. H.R. 16484 is commonly referred to as the Bickel Bill. The differences, aside from the fact that the sections are numbered differently, are:

(1) In Section 2(b) of H.R. 16484 transportation which may be required to effectuate the right of transfer under that section is provided at public expense. In Section 3(b) of S.4167 transportation is provided, but the words "at public expense" are deleted.

(2) In the two sections 2(d) and 6(b) of H.R. 16484 which deal with attorney's fees in court actions, the language is mandatory; "...the court shall allow the moving parties...a reasonable attorney's fee..." whereby in Sections 3(d) and 7(b) of S.4167 the language is permissive; "...the court may allow the moving parties... a reasonable attorney's fee..."

In the event you are asked to comment, or otherwise testify on S.4167, I recommend you vigorously oppose its passage. It creates a Federal system of "neighborhood" schools, which tend to be segregated in fact and it proposes to remedy intentional segregation by the least effective method, that of the individual transfer by Negro pupils, enforceable through litigation.

John H. Powell, Jr.
JOHN H. POWELL, JR.
General Counsel

Attachment

Senator PELL. Senator Spong, if you would care to be up here when you give your testimony or on the witness stand and come up here afterward, you are welcome.

Senator SPONG. Mr. Chairman, I would like to testify from here and, if I may, I would like to join you when the other witnesses testify.

Also, I would appreciate it if Congressman Preyer from North Carolina, who is here with me today, might testify after I do and then both of us answer your questions together.

Senator PELL. Proceed as you wish.

STATEMENT OF HON. WILLIAM B. SPONG, JR., A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator SPONG. First of all, Mr. Chairman, I want to thank you for holding these hearings. We are at this time, I believe, facing a crucial time in our school systems. Urgent problems of school desegregation must be met and resolved. They must be met and resolved in the near future. I am, therefore, quite pleased that the chairman responded so promptly in scheduling these hearings.

As I noted in a recent letter to the chairman, many of the current problems and much of the existing confusion result from conflicting policies on the Federal level and varying decisions in our courts. I outlined some of these conflicts in a letter which I wrote to the chairman on August 18, and I would like to ask that that letter be included in the hearing record.

(The information referred to follows:)

U.S. SENATE,
Washington, D.C., August 18, 1970.

HON. CLAIBORNE PELL,
Chairman, Subcommittee on Education,
Old Senate Office Building,
Washington, D.C.

DEAR CLAIBORNE: Having traveled in my state during the past two weekends, having talked with numerous persons from Virginia and other states, and having participated in recent hearings of the Senate Select Committee on Equal Educational Opportunity, I am disturbed by the confusion and frustration over our current desegregation efforts. Because of the depth of feeling on these matters, appeal to you as chairman of the Senate subcommittee with jurisdiction and legislative authority over educational matters.

The contradictions in current desegregation policy are overwhelming. They are contributing to fear, misunderstanding and hate. They are retarding progress toward a goal of sound education for all our children.

We hear statements to the effect that there is an Administration goal of having 40 percent of black children in the South attend majority group schools while the 1968 school statistics show that only 4.7 percent of blacks in Los Angeles were attending such schools, 3.2 percent in Chicago, 9.6 percent in Philadelphia, 7.7 percent in Baltimore, 4.8 percent in Cleveland, 2.1 percent in Gary.

We are told that segregation, no matter what its origin, is detrimental to a child, but that only limited actions can be taken to overcome de facto segregation.

We are told by some that de facto and de jure segregation are vastly different and by others that much de facto segregation has its roots in official action.

We are told that a system is de jure if it had a school segregation law at the time of the *Brown* decision but that it would be considered de facto if it had had the foresight to repeal the law before the decision was handed down.

We are told by the U.S. Attorney General that his reading of the Constitution leads him "to believe that the Fourteenth Amendment does not incorporate the concept of racial balance" while the Chief Justice of the United States says that the Supreme Court must resolve a number of problems, including "whether, as a constitutional matter, any particular racial balance must be achieved in the schools . . ." and while a judge in the U.S. District Court for the Eastern District of Virginia concludes, "it must be assumed that some plan, short of racial balancing, may possibly meet with favor on the appellate level."

We are told by the President of the United States that "the neighborhood school will be deemed the most appropriate base for . . . a (school) system" while a Fourth Circuit Court Judge refers to the neighborhood school concept as a "shibboleth" and a district judge finds that "according to the higher court (in this case the Fourth Circuit) the neighborhood school attended by so many of the young children is a judicial outcast except to the extent that the particular school serves an appreciable percentage of both races."

We are told that more busing and less busing is needed and, as a Western Senator noted, three different judges in Virginia on the same day issued three different rulings on requirements which must be met by school districts this year, which is only weeks away.

We are told that quality education is our goal, yet one court receives expert educational testimony while another refuses to consider it and while a district judge, in approving a desegregation plan, states, "It should be crystal clear that the action of the district court (in approving a plan) . . . does not constitute a finding or conclusion that the final plan, or any other plan submitted at this hearing, is (1) educationally sound, (2) reasonable, or (3) in the best interest of the children irrespective of race."

We are told that the South's schools are, in general, below par, that per pupil expenditures are low, but that Southern taxpayers will have to raise new tax money, not to improve curriculum, teachers' salaries and facilities but to cover transportation costs to effect more desegregation than exists in certain Northern cities.

These inconsistencies are appalling and they are inexcusable. Education is too important an endeavor to be disrupted, torn, confused and debilitated as is now happening.

I have introduced a bill in the Senate, S. 4167, and Congressman Richardson Preyer has introduced a bill, H.R. 16484, in the House. These are not perfect bills. We both readily admit this. But, these bills do seek, most importantly I believe, to establish a single, uniform desegregation policy throughout our nation and to bring reason to bear upon a continuing desegregation effort.

We can, at this point, utilize what expertise and professionalism we have to create an educational policy for the future or we can muddle onward with a variety of ambiguous and conflicting objectives, hoping that eventually all will work out.

I believe we owe ourselves and all Americans more than the latter course will provide. I believe we will be derelict in our duty here if we do not, at least, try to pursue the former course.

For the many reasons expressed in this letter, I urge you, as chairman of the committee with legislative authority over education, to hold hearings as soon as possible on S. 4167, so that the latter may be used as a vehicle for creating a national desegregation policy based upon reason and understanding.

With kind regards.

Sincerely,

William B. Spong, Jr.

Senator Spong. In addition to the conflicts which I outlined on August 18, I am quite concerned about two other aspects of the existing situation.

First, a number of the school plans which are being put into effect throughout the country are mere numbers plans. They result from matching a number of black students with a number of white students. Often, they give no consideration to the best professional educational expertise which is currently available. Certainly, the findings of some of the educational studies are open to question, but they represent the best information currently available; to engage in massive changes in our educational systems without reference to these materials is absurd.

Second, I am concerned about certain employees who are being presented by Federal agencies as experts. During a recent hearing before the Senate Select Committee on Equal Educational Opportunity, I quoted from a deposition, which indicated that a representative of the Department of Health, Education, and Welfare spent 5 hours working on a plan for the desegregation of the Norfolk city schools, while local officials and attorneys had spent more than 1,000 hours working on plans.

Had the HEW "expert" had something to contribute to the case, his participation would have been welcomed, but, according to the deposition, he could name none of the professionals in school desegregation research and he had not read the Civil Rights Commission report on "Racial Isolation in the Public Schools" or the landmark *Brown* decision of the U.S. Supreme Court.

The conflicts which I recited in my August 18 letter, the failure to give adequate attention to educational considerations and the blunders of Federal Government personnel compel congressional action.

It is for these reasons that S. 4167, the National School Desegregation Act of 1970, has been offered.

We have, I believe, bumbled along too long. We owe ourselves and our children—black, white, Indian, Spanish-American, or whatever—more than we have provided and more than we will provide if we continue the current path of confusion, disorder and turmoil.

I believe in an equal educational opportunity for every child. I believe all our children should receive the best education which our Nation, with its many resources, can offer. I believe that it is wrong to classify men by race.

I do not, however, believe that current desegregation efforts will lead anywhere except to further dissarray in our education systems.

S. 4167 seeks to bring an end to that disarray. It seeks to apply reason to meeting the problems resulting from the desegregation of our public schools. It seeks the full implmentation of the *Brown* decision.

It is a balanced approach. Taken alone, any single section could be misunderstood, could be seen as an appeal to either the left or the right. Taken as a whole, the bill offers a way to move into a desegregated school system throughout our Nation, without destroying the educational value of the public schools and without imposing unnecessary, and perhaps, superfluous financial requirements upon localities.

The basic provisions of the bill are simple. A national right would be established for any child attending a school in which his race is in a majority to transfer to a school in which his race is in a minority. This right has been recognized in a number of court decisions and is already being utilized in certain school districts.

Generally, however, children would be assigned to the school nearest their places of residence. The neighborhood school is a product of American history. It exists in every community. Its greatest advantage is, perhaps, convenience. That is important to all parents, rich and poor, black andwhite.

It is true that the concept of the neighborhood school has been violated in the past. Black children have been bused past white schools to attend black ones and white children have been bused past black schools to white ones. School districts have been gerrymandered.

S. 4167 would, however, forbid such practices and would require local school officials to demonstrate good faith in complying with these provisions.

The neighborhood school is at the heart of the American public school system. To deny the abuses which have sometimes attended it is to ignore fact. But, to deny its advantages is also to overlook the experience of the past.

Perhaps the most frequent criticism of the neighborhood school is that it fails to reflect the diversity of the American people, that it is too homogeneous. To some extent, this is a recent phenomenon. In earlier days, when America was more a land of small towns, children from all segments of the population often attended the same school. As America has become more urbanized, more homogeneous neighborhoods have developed. This is not the fault of the schools. It is simply something that has happened in the absence of broad, regional urban planning.

It is important that all Americans know and respect the diversity of our nation. S. 4167 would help to provide this. The national right of transfer would be one method. The provision permitting variance from the neighborhood assignment policy where necessitated by availability of programs, where undertaken voluntarily by a school board to achieve a better racial balance or where undertaken to prevent resegregation would be another.

What the bill does not do is force upon our school districts massive social experimentation, which can be questioned educationally.

Finally, the bill would seek to provide for an equalization of educational facilities, services, courses, texts, and so forth. It is long past time that we acted throughout this Nation to eliminate the educational disparities which exist.

This bill will not satisfy those who hope, out of the current confusion, to delay integrated education in any part of our Nation. It will not satisfy those who wish massive social experimentation in the schools and who are interested in mixing numbers, at any educational or financial cost.

Of the former, I would ask, "Are you willing to see the American ideal of equality and opportunity for all our children vanish?"

Of the latter, I would ask, "What will you have accomplished if you destroy or debilitate the public school system?"

This bill, then, is offered to those rational and fairminded Americans who, I believe, want an open society, with freedom and opportunity, and who want a public school system, based not on guesswork, social experimentation, and rhetoric, but on sound educational principles and wise procedures.

Mr. Chairman, I believe you have already mentioned the summary of the bill section by section, which we have submitted; so I assume this is a part of the record.

Senator PELL. That is right.

Senator SPONG. I have mailed to the chairman a letter pointing out certain errors in section numbers in the bill, which I hope the Chair will take cognizance of.

Mr. Chairman, I am very pleased to be accompanied here today by Congressman Richardson Preyer, of North Carolina. Congressman Preyer introduced in the House a companion bill to S. 4167 some weeks before I introduced that bill in the Senate.

Congressman Preyer is a former Federal judge. He is now a Member of the House. There is some question in my mind whether or not he is better off in his present situation than in his previous one. He is better off for the time being in comparison with you, Senator Eagleton, and myself because he is in the midst of a 3-week recess, which we are not enjoying. He has returned from that recess to be with us today, and I am very pleased to present him to this committee. He has devoted many, many hours to school desegregation problems in the cities of his State, North Carolina. There are many problems there comparable to those experienced in the cities of Virginia. So I take great pleasure in presenting Congressman Preyer. There is a biographical sketch we will submit to the committee to be placed prior to his testimony.

Senator PELL. All right.

(The information referred to follows:)

RICHARD PREYER, DEMOCRAT

FAMILY DATA

Born in Greensboro on January 11, 1919; Attended elementary schools of Greensboro, N.C.; Attended Greensboro High School; Attended Woodberry Forest, Woodberry Forest, Va.; Attended Princeton University, 1937–41, A.B. Degree; Attended Harvard Law School, 1946–49, Law Degree; Married Emily Irving Harris of Greensboro, N.C.; The Preyers have five children—three girls and two boys.

RELIGION

Member of First Presbyterian Church of Greensboro; Elder and former Clerk of Session for the church, and a teacher of the Men's Bible Class (about 200 men).

MIILTARY SERVICE

United States Navy (Lt. USNR). Four years on destroyer duty in Atlantic and South Pacific as Gunnery officer and Executive Officer, World War II. Awarded Bronze Star for action in Okinawa.

OCCUPATIONS

Worked in New York City for Vick Chemical Company, 1950; Began practice of law in Greensboro with own law office; Appointed City Judge 1953–54; Appointed to N.C. Superior Court in July, 1956; Appointed Federal Judge of the Middle District Court in October, 1961. In September, 1963, resigned Judgeship to become candidate for Governor of North Carolina, where he led in First Primary by 24,000 votes, and lost in Secondary Primary. In November, 1964, became Senior Vice President and Trust Officer of North Carolina National Bank, Greensboro, North Carolina. In May, 1966, became City Executive for Greensboro of North Carolina National Bank; November 5, 1968, Elected to U.S. Congress, 6th District, North Carolina; Member: House Committees on Interstate and Foreign Commerce and Internal Security.

BUSINESS ASSOCIATIONS

Member of Board of Directors of Re-Insurance Corp. of New York, New York City; Member of Board of Directors, Piedmont Southern Life Insurance Company, Atlanta, Georgia; Director of Richardson Corporation, Greensboro; Member of Newcomen Society.

NORTH CAROLINA ACTIVITIES

Chairman, N.C. Citizens Committee for Better Schools, 1963–64; Chairman, Board of Visitors, Davidson College; Board of Trustees, St. Andrews College, Laurinburg, N.C.; Board of Visitors, Wake Forest Law School, Winston-Salem, N.C.; Trustee, Glade Valley School, N.C.—1967–68; Chairman, N.C. Trade Fair Mission to Europe (1962); N.C. Probation Commission (1960–1962); Former Chairman of Board, N.C. Outward Bound School.

COMMUNITY ACTIVITIES

United States Jr. Chamber of Commerce award as "Greensboro's Young Man of the Year" 1954; Commissioner of Greensboro Little League and Pony League Baseball programs; Honorary Chairman 1965 Greater Greensboro Open; Co-Chairman with Mrs. Preyer of Library Bonds Committee, for November, 1960 election (election carried); Vice-Chairman Board of Trustees, L. Richardsom Memorial Hospital; Board of Directors, YMCA; General Chairman YM-YW Capital Fund Drive 1967–68, ($1½ mill. raised); Former Chairman, Operation DARE (Downtown Area Renewal); President, Greensboro Community Arts Council 1965–67; Chairman, Committee on the Study of Health Services in Guilford County (1965); Boy Scouts: Vice President, General Greene Council; 1968—Inter-Club Council's Outstanding Civic Leader of the Year Award, Greensboro, N.C.

STATEMENT OF HON. RICHARDSON PREYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Representative PREYER. Thank you, Senator Spong and Chairman Pell. I appreciate very much the opportunity of testifying today.

With the chairman's permission, I would like to introduce into the record my statement made before a Subcommittee on Education in the House with reference to H.R. 16484, which is a generally similar bill.

That is a more basic statement about the bill, and my statement today is in the nature of additional comments to that statement. I won't read all of this statement today, but I would like to introduce it into the record.

Senator Pell. The statement will be printed in the record in full at the end of your testimony.

Representative Preyer. Thank you, sir.

For the first time in our history we are close to being able to end racial discrimination by law and beyond that to keep open the possibility of whites and blacks learning how to live together as equals under the law. Racial progress in the South has reached a point where there is no longer any question that school desegregation is permanent and will be firmly enforced. The dual school system has been packed away in the attic of history; mixed schools are gaining acceptance.

But we stand to lose this now when this great advance is so close at hand by the unreasonable application of mechanical rules of racial balance to our schools, which is hardening attitudes between the races and causing the loss of the widespread support needed to make desegregation and integration a reality.

When the Brown decision in 1954 ended segregated school systems, many were disappointed that integration did not occur to the extent they expected. Why? Well, one reason we must admit that there was not more extensive integration was the deeply and historically rooted emotions or prejudices, if you will, which resisted such a sweeping change.

But there is another reason. Btoh in southern and northern cities population movements since 1954 have brought into existence a widening territorial separation of the races. School desegregation is still attainable in rural areas of the South where blacks and whites live side by side. It is still attainable in moderate-sized cities of the North and South, but not without extensive busing, and in our larger cities effective integration of our schools is probably no longer possible.

Should we then accomplish school integration by mandatory means in the rural South—which means in effect integrating blacks with the poor since others will flee to the suburbs or private schools—or should we accomplish it only in "easier" cities?

But if we employ mandatory means in Hartford and not in New York, in Charlotte and not in Detroit, then we have an unequal system of law, obviously unequal to all, something that our political and legal system cannot sustain.

Thus, we must have a national policy on school desegregation, but population movements make a national policy of racial balance increasingly impractical.

Furthermore, the law is in transition from one principle to another. The result is serious instability. Political support for the goal of desegregation is in flux and is weakening. There may be the feeling on the part of some segregationists in the deep South that they can win after all.

The gains that have been made are in danger of being lost in the new uncertainty.

On the other hand, efforts to go beyond desegregation and force integration through some form of racial balance requiring mass cross busing are creating social tensions that seriously handicap the ability of whites and blacks to live together.

As Dr. Wilcox, the black educational consultant, has stated, busing results in training black and white kids to hate each other.

Senator Spong's bill meets these problems, that is, the problem of declining support of desegregation on the one hand and of resistance to massive integration as a national policy on the other.

It has two main objectives. First, it remobilizes support for and relaunches the program of desegregation.

Second, it stabilizes the desegregation law by defining a unitary system in terms of the principle of voluntarism and not mandatory racial balance.

There is a great difference in the demeaning significance of de jure segregation—which says by law that you can't go to school with the other race—and de facto segregation—which arises from historical reasons other than law. For example, whether you are poor or of low income, middle income or rich largely determines where you live, not segregation laws.

I might add also there that race, religion, nationality determine where you live. There are many little Italies, there are many Jewish communities, and these are not the result of law, or segregation laws.

The problem before the country now is this kind of a problem, it is de facto segregation. It is not the kind, the demeaning kind of problem, the de jure kind.

This means that we are dealing with the kind of problem in which we are justified in balancing interests. It is not the kind of problem that de jure segregation presented where the demeaning nature of the de jure segregation, the morally offensive nature of it, was such that it had to be eliminated, regardless of other interests that might be involved.

So we must balance the interests gained by busing to achieve racial balance against the harm to other interests caused by busing.

For one thing we must surely balance it against the great damage it does to our effort to achieve biracial unity and the severe harm it may do to the education of children who are the first victims of its failure to put reason above racial arithmetic.

Striking the balance among these competing interests would be easier if there was convincing data to show that the best way to improve black education was racial balance, but the answers are not in on the educational value of racial composition and minority group performance.

The recent evidence indicates that no educational benefits automatically result from mixing schools on a mathematical racial balance. Many people who are for complete integration are not therefore in favor of racial balance. Shouldn't we go very slowly in mandating racial balance with the serious social and educational dislocation it brings, without some clear evidence of the benefits it brings?

In balancing interests we must also be realistic in recognizing that population movements may continue to widen the geographical distances between white and black, thus resulting in increasing difficulty in effecting racial balance by busing. We must also recognize that using the school system, through busing, is not the only way to bridge this geographical gap between whites and blacks.

As Samuel Lubell says in his recent book, "A new realistic definition of integration is needed, one which recognizes that residential segregation in itself does not cut off steady gains toward ever-fuller integration."

He cites the example that nearly all of Cleveland's Negroes live in segregated neighborhoods, but he finds that especially since Mayor Stokes' election the blacks have made dramatic progress in being integrated into the life of Cleveland through a wider array of jobs, residential mobility, political power, patronage, and what he says sums it all up, "a growing sense of constructive pride built politically and economically."

In short, schools did not cause segregated neighborhoods. They cannot be expected to eliminate them.

The geographical polarization between white and black can be overcome through better ways than busing. In fact, I think it could be argued that racial balance probably leads to more geographical polarization rather than breaking it down.

In balancing interests, we must recognize that to push for ultimate racial dispersal roughly proportional to the racial mix in the local school population is practically and politically unrealistic. Often it leads to perverse and counterproductive results such as resegregation, or the movement from public to private schools.

Moreover the result may be educationally disadvantageous. As far as we know, there is no gain in mixing blacks and lower income whites. Moving bodies does not necessarily give an educational return.

Further, there is evidence that the blacks themselves are seeking other solutions. Many of both races feel that there are perhaps more important goals to be achieved and that the law should not assume a posture that will make these aims impossible.

Decentralization, for example, became a major goal in New York

City and is now also being implemented in Detroit. Having seen the failures of large school systems and feeling that the schools should have some identity with the family, that the child should feel at home, many blacks have embraced the idea of community control over the schools, the ideas that the schools should be a fairly homogeneous social and cultural group run by a homogeneous community.

We have to grant that there is a thin line between this motivation and a racist one. Yet we must realize, "Is it wise to close off this avenue and this alternative? Do we know enough about the effects of and obstacles to massive integration to declare that the national policy?"

I think the answer to that is clearly, "No."

To sum up, this bill's philosophy is that we should not now attempt a national policy on de facto segregation primarily because we do not know enough at this time to put the Federal Government into the position of solving the de facto situation.

The best thing we can do now is to remobilize support for the program of desegregation and stabilize the educational situation by defining the unitary system as in Senator Spong's bill.

Now, some will say, "We have heard it all before, this talk of 'give us more time, we must consider educational values.' " But you have not heard it from these people before; you have not heard it from distinguished blacks like Dr. Charles Hamilton and the columnist William Raspberry, nor from constitutional law authorities like Alexander Bickel and educators like Professor Levin at Stanford.

Finally, I would emphasize as strongly as I know how that the resistance of the public to the kind of forced integration that results in massive cross-busing is not a minor irritant caused by lack of leadership on this question. The kind of education that our children receive, and the circumstances under which they receive it, involves the deepest and most basic human emotions. We stir up these emotions at our peril.

I have included as an addendum to my statement some comments on provisions of the bill. The comments are not systematic, but they point up a few areas that I have had a number of questions about. I would like to just mention two of those, if I may.

First, I would like to emphasize that this bill does commit the Government to equalization of educational opportunities in section 4, and I think it is important to emphasize that this is not just a verbal commitment, this is a part of the criteria that a school must meet to have a unitary school system. Thus it is not dead-letter language such as is contained in the HEW guidelines, "dead-letter" because no money was attached.

Here money will be required in order to meet the criteria of a unitary school system, and equalization of educational opportunities therefore will become effective national policy.

Another point which I would like to mention is the provision in the bill dealing with resegregation. The bill provides variances in section 6 in the provisos 1, 2, and 3 in the case where resegregation will result from neighborhood zoning.

If the school district can prove in court that strict zoning plan will have a resegregation effect, then a modified zoning plan would be allowed.

The reliance here is on the factfinder, the court and HEW, and the burden of proof on this is on the school board.

This provision is an attempt to face the problem of resegregation.

Now, some have argued that this will be a way to continue southern segregation, but this is simply not true, as the bill is written, unless one assumes that the law is an ass and has no meaning. This bill is perhaps the first attempt in law to prevent or to arrest the 15- to 20-year-old trend toward resegregation.

Moreover, short of massive coercive programs, maybe all that we can do is to correct one of the factors that lead to resegregation. Thus one might prefer to keep a school at 30 percent black rather than have the proportioning up to 40 percent and then quickly to 50 or 60 percent black.

The resegregation problem is a real one in the South, as witnessed by the experience in Atlanta and also the experience in one city in my district.

Thank you very much, Mr. Chairman, for the opportunity to testify.

OPERATION OF THE BILL

Senator **Pell**. I have a couple of specific questions, but before going into them, would you clarify for the record, what the bill would actually do, would you give us a theoretical example of what enactment of this bill would mean to a school in, say, Harlem.

Senator **Spong**. First of all, it would give the school in Harlem something that presently does not exist in two instances. First would be the right of transfer with the expense paid. I believe—you picked Harlem instead of Chicago which might be a better example—I believe in New York about 5 years ago they enacted a transfer plan, but the expense has to be borne by the student or his parents and so, if he wants to go to another school in New York from Harlem, he does so but at his own expense.

So as far as Harlem is concerned, the bill would add the transportation cost feature, which I think would be more of a capacity than incentive for a student who sought to transfer to a better school to do so.

Secondly, the bill would provide what Congressman Preyer has covered very well in his statement, and that is the need for quality education and equal education between schools within a school division.

This bill provides what I believe you, Mr. Chairman, have hoped for for some time, that criteria can be established to meet the problem of wide disparity that exists throughout the United States insofar as school offerings are concerned.

We have, in my State, a wide offering between school divisions. We hear in the District of Columbia, as Senator Eagleton knows from our District Committee work, charges that even the per pupil expenditure in some parts of the school division is more than in others.

Now, this bill would establish a criteria, a yardstick to measure what a good school should be.

Senator **Pell**. Forgive me. I want you, if you would, to be more specific. Let me pose the following situation: There is a school in Chicago with 1,000 students, 90-percent black, and this bill passes, what would it mean to that school?

Would it mean that all 1,000 could then have a right, at Government expense to move to schools that were not black?

Senator **Spong**. They would have that right, subject to certain conditions that are built into the bill dealing with the State system of education, and the Chicago system of education. These conditions are outlined in section 6 of the bill.

Frankly, I don't anticipate that all of the students in this one school would want to go somewhere else, but let me throw this question back to you: In the absence of any court rulings and based upon the answers given to me by Mr. Jerris Leonard and by the Attorney General, Mr. Mitchell, and I believe by Mr. Richardson, what right does a student in your theoretical school in Chicago now have insofar as a right of transfer?

What we are trying to say to you that under the present situation in this country the entire effort insofar as this numbers game is concerned is concentrated in the Southern part of the United States because of what is known as de jure segregation.

Now, we recognize, as do many authorities, that there is a very, very fine distinction legally between de facto and de jure segregation but educationally there is no distinction.

Now to answer your question, that theoretical school would probably remain a predominantly black school. That might not be the full measure of relief hoped for, but I would point out that under the existing law, under the existing court decisions, and under all of the testimony that the Senate Select Committee on Equal Educational Opportunity has thus far gathered, this bill would give that school in Chicago and the students in that school more than they presently have.

Perhaps Congressman Preyer would like to comment on the question.

Representative **Preyer**. I think Senator Spong has covered it very thoroughly. In Chicago at the present time, the black student is locked in the black school, and in that instance of Chicago there is no right of transfer out.

In New York there is a right to transfer out, but it is not a meaningful right because the expense of the transfer is not taken care of, so this bill does attempt to break down the racial isolation of that school by not only allowing free transfers out but makes it a reality by providing transportation expenses.

The other main way in which it would help is by the equalization of educational opportunities. The bill does not bring that school into any sort of racial balance and in a city such as Chicago with a 30-mile black residential area it is difficult to see how more than this bill does could be done at this time to break down racial isolation. Racial balance would seem to be an impossibility.

Senator **Pell**. Our responsibility is to try to make the complicated simple, the fuzzy specific. I have read your bill and I find it difficult. As a nonlawyer I don't comprehend it as well as I should, and this is why I want specific examples of what it would actually do. As I understand your answer, if this bill were enacted those minority students in Chicago would have the opportunity to transfer to another school.

How do you prevent the following situation: 10 buses, for 10 students on a block where each wants to go to different school.

Senator Spong. I don't know that you do prevent them.

Senator Pell. That would be most expensive.

Senator Spong. It is certainly not any more expensive than what is imposed on cities of the South if massive busing is going to be the order of the day. If the plans submitted to the city of Norfolk had been completely accepted by the court, the capital expenditure would have been in excess of $4 million and the operating expenditure each year would be $800,000. It wouldn't be any more expensive than that. But the bill also contemplates the use of some logic on the part of local officials. The child in the school in which his race is in a majority would have a right to transfer to a school in which his race is in a minority—not to any such school he might choose. The local school officials would be expected to exercise some control over the situation and to act rationally on assignments.

Senator Pell. Right, but at least the youngsters in one block would be carried by bus to another school out of the area, but under your bill as I understand you could have 10 kids in one block choosing 10 different schools, and you would need 10 minibuses to take them to school.

Senator Spong. No; you would not. It does not contemplate the furnishing of the vehicle in all cases although this might be done in some, Mr. Chairman. It is the expense of the transportation that is involved, as you know, the States are already in large measure contributing toward transportation; this contemplates an extension of that.

OPPOSITION TO THE BILL

Senator Pell. At the last hearing we had on S. 3883, I brought Senator Spong's bill up and I would like to read you the comment of Mr. Clarence Mitchell, Washington Representative of the NAACP, who said:

> It should also be noted that the framers of this legislation should reject the pusillanimous soft-shoe approaches advocated by those following the advice of Professor Bickel of Yale University. Mr. Bickel's exhibit of why there is growing distrust of some white people to support the minority groups. This is no time to cover up the attempts to maintain racial segregation with complicated legal strategies as a complement. I am sure I speak for thousands of colored citizens when I say we wish Mr. Bickel to keep his nose out of the particular part of the nation's business but because he does not seem to want to do it, we hope that members of the House will not follow his advice.

There is also in the record a more specific letter from Mr. Jack Greenberg, director, counsel of NAACP Legal Defense Fund.

Sentor Pell. What would be your comments on those allegations?

Senator Spong. First of all, I feel that probably Dr. Bickel should answer the criticism directed toward him.

Senator Pell. If I may interrupt, as you know, we invited him here, but it did not fit into his schedule.

Senator Spong. You have been sent by Professor Bickel, I believe, a letter with regard to this matter which you will receive, and I assume would put in the record. You may not have received it, but it is being mailed to you. I think he is quite capable of answering parts of what you read to me himself. He will appear on September 24, before the Mondale Committee and since that committee is partially under the auspices of your own committee think this would afford an excellent opportunity for him to address himself to that point.

Senator Pell. The letter will be printed in the record at this point.

(The information referred to follows:)

CENTER FOR ADVANCED STUDY IN THE BEHAVIORAL SCIENCES

202 Junipero Serra Boulevard • Stanford, California 94305
Telephone (415) 321-2052

August 25, 1970

Honorable Claiborne Pell
Senate Office Building
Washington, D. C. 20510

Dear Senator Pell:

I write in connection with the testimony by Mr. Clarence Mitchell before your Education Subcommittee of the Committee on Labor and Public Welfare concerning S. 3883, on August 11, 1970.

At the end of his statement, Mr. Mitchell urged in rather harsh terms that the Subcommittee not follow advice that I supposedly tendered.

I have great respect for Mr. Mitchell and for the work he has done through the years, and no harshness on his part toward me will diminish that respect. On the other hand, no amount of respect for Mr. Mitchell and for those he represents can change views I have expressed in my writing and teaching and in testimony I have given on the invitation -- always on the invitation -- of various Congressional committees. I write chiefly to put on record my hope that the views to which Mr. Mitchell objects are not those I have expressed on the proposed Emergency School Aid Act. Those views are embodied in testimony I gave before the General Subcommittee on Education of the Committee on Education and Labor of the House of Representatives on H.R. 17846, on June 24, 1970. I take the liberty of enclosing a copy of my statement on H.R. 17846.

I suspect Mr. Mitchell may have in mind S. 4167 and H.R. 16484, introduced respectively by Senator Spong and Congressman Preyer, which I support, although I do not necessarily think them perfect drafts. I will say merely that it seems to me wholly indiscriminate and totally unfair to refer to these Bills, as Mr. Mitchell did, as "attempts to maintain racial segregation with complicated legal stratagems and compromises."

This letter rises, so to speak, on a point of personal privilege, and is for the information of yourself and of members of your Subcommittee. Turning largely, as I say, on a point of personal privilege, it is of no importance. Should you by any chance think it worthwhile, however, to insert it in the record of your hearings, I would certainly have no objection.

Faithfully yours,

Alexander M. Bickel

AMB:act
Cc: Senator William B. Spong, Jr.
Enclosure

STATEMENT BY ALEXANDER M. BICKEL, NEW HAVEN, CONNECTICUT,
BEFORE GENERAL SUBCOMMITTEE ON EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
HOUSE OF REPRESENTATIVES,
ON
THE EMERGENCY SCHOOL AID BILL, H.R. 17846,
WASHINGTON, D.C.,
JUNE 24, 1970

I am very glad to be here this morning at the Subcommittee's invitation, and to register my enthusiastic support for the proposed Emergency School Aid Act of 1970, H.R. 17846.

If the proposal is enacted, as I hope it is, it will mark the first time that substantial federal resources have been committed in aid of the desegregation of public schools which were formerly segregated by law or official administrative action. This bill will mark the first time also that any federal resources have been specifically and specially committed in aid of voluntary local action to alleviate conditions of racial imbalance in public schools, or to cope with the consequences of such conditions. The Emergency School Aid Act of 1970 would be a very important new federal undertaking, and long overdue.

Of course, Title IV of the Civil Rights Act of 1964 authorized technical assistance and training grants to desegregating school districts. But appropriations made to implement this Title have always been minor, and the authority extends only to aiding districts in the process of desegregation, which is specifically defined as not including measures to overcome racial imbalance. The Elementary and Secondary Education Act of 1965, as amended, while designed to aid poorer school districts in meeting the special educational needs of deprived children, is a general aid-to-education measure, a measure in aid of general educational purposes. It does not aim specifically at, and it has not hit with any impact, the special targets at which the Emergency School Aid Act of 1970 would be directed. So I repeat, this proposal is a new departure, long overdue, and highly welcome. Frankly, I think this should have been done fifteen years ago.

Under the double-counting provision of Section 4, as it applies to desegregating districts, some two-thirds of the billion and a half dollars that the Act would authorize would go to districts engaged in the process of desegregating pursuant to court order, or pursuant to a plan approved by HEW. Some districts in the North and West may be involved, but the vast bulk will be Southern districts.

I do not see that the formula of Section 4 rewards districts that have been particularly recalcitrant, and have waited to have desegregation forced upon them, except as inevitably the fact that we have waited fifteen years before having such a statute rewards districts that have also waited, and in a sense works injustice on districts that desegregated long ago. It can hardly be helped, this late in the game, that many districts worked out their problems without federal assistance during the many years when none was available. Many of these districts had relatively easier problems to deal with.

For a variety of reasons, not excluding in many instances bad faith on the part of local authorities, the problem persists in varying degrees in hundreds of districts, and if this bill is passed, the federal government will finally be doing something substantial to help in its solution. But the formula of Section 4 does not now reward districts which wait to have the force of law brought to bear on them before desegregating. It offers special help equally to districts operating under a court decree issued in the last couple of years or to be issued this fiscal year and next, and to districts operating under voluntary plans approved by the Secretary of Health, Education and Welfare, pursuant to Title VI of the Civil Rights Act of 1964.

The formula embodied in Section 4 recognizes that there is still a special problem in the South. And there is. It is a reproach to all of us that fifteen years after the decree in Brown v. Board of Education several hundred school districts in the South have still not completed desegregation, but that is the fact, and this bill faces it.

At least since the spring of 1968, the aim of the Supreme Court has been to complete the process of desegregation forthwith. The deliberate-speed doctrine was never intended to define a permanent condition, the Supreme Court has been deemphasizing it for some time, and last fall, in Alexander v. Holmes County, the Court made its abandonment of the doctrine as clear as could be. The law now demands that every Southern school district must operate a desegregated, unitary system when schools open this coming fall. There is thus not only a remaining special problem in the South, but a special opportunity. Many existing desegregation plans must be brought to a final conclusion this summer and fall, and where no acceptable plan exists, it must be worked out and put into effect now.

A special need exists, as I have said, this summer and fall, and there is a special opportunity. Both call for a special effort, which this bill represents. Yet it is not quite true that the problem in the South can be solved entirely this summer and fall, for while every district must act now if it has not desegregated itself to the satisfaction of a court or of HEW, it is not yet clear what end result a desegregating district must attain. Formerly segregated school systems must be converted into unitary ones, but we have no detailed, authoritative definition of what a unitary system must look like.

We know that freedom-of-choice plans superimposed on an essentially dual system, and producing no more than a minor black presence in previously all-white schools will not do. Nor will residential zoning, if the good faith of a school board is in doubt, and whites who have been zoned into a substantially Negro attendance area are allowed to transfer out. Faculties must be desegregated, so that a monolithically black or white faculty does not characterize a school as black or white. But the Supreme Court has not indicated, one way or the other, whether a racial balance of any sort must be achieved in each school, or whether zoning which causes residential patterns to be reflected in the schools is unconstitutional as such. The Court has not said whether the persistence of some predominantly or even wholly Negro and white schools is unconstitutional.

Some lower federal courts have gone farther. The main drift of many decisions over the past year and a half has been toward requiring some measure of racial balance. But such decisions are not ultimately authoritative. And they have not been uniform. Most of them are in any event conditioned by the particular circumstances and the history of litigation in a particular school district. Moreover, such generalizations as can be drawn from these decisions do not all point in the same direction. Even within a single court, the Court of Appeals for the Fifth Circuit, covering the Deep South, one can find, for example, decisions that do not accept residential zoning, and decisions that do.

Desegregation this summer and fall must proceed in this state of ultimate uncertainty, which perhaps the Supreme Court may dispel by one or more decisions at its next term, to be implemented a year hence. To the question of how a unitary school system is ultimately to be defined, this bill is not addressed. Under the President's statement of March 24, 1970, we may assume that the Administration will not pursue a policy, in the South or elsewhere, of insisting on racial balance, or of insisting that no predominantly black or white, or all-black or all-white school be allowed to exist. But there is every indication that the Administration will insist on good-faith disestablishment of legal systems of segregation in the South, and disestablishment in a place where legal segregation has prevailed recently can only be demonstrated by results, which in turn may mean that some measure of racial balance needs to be shown, to be achieved by school-pairings, by closing some altogether substandard Negro schools, and by choosing sites for new schools and drawing zone boundaries for existing schools with an eye to some measure of integration. Certainly such requirements have been laid down by judicial decrees, and the courts may lay down further ones. In any event, this bill will devote federal resources to assist in implementing whatever desegregation plans are called for. It is aimed at assisting desegregation, not at defining it.

So far as the North and West are concerned, the bill rests on the principle of local initiative, which it encourages. It makes available one-third of the authorized billion and a half dollars to help school districts eliminate, reduce or prevent racial imbalance in the schools, or as the bill calls it, racial isolation, and to carry out inter-racial educational programs or projects. I don't know that more can or should be asked of the federal government with respect specifically to the problem of racial imbalance in the public schools. More in the way of money, no doubt, but not more in the way of substantive policy.

I should like now to deal with one omission in the bill, which I regret, and with one marginal point, the question of bussing.

In my judgment, one of the developments in public education in the United States worthy of encouragement is the movement for community control, for decentralization and diversification of public school systems under the management of the communities, rather than the larger political subdivisions, which the systems serve. Decentralization and community control are not techniques that will lead to better racial balance in the schools. They are techniques that will make the schools more responsive to cohesive groups of parents, that will alleviate the frustration and sense of powerlessness on the part of these groups, and that will thus, hopefully, improve education because the parents will demand it, and are the first to know whether they are getting it.

I should add that community control of decentralized schools must rest not only on the principle of local initiative, but on the principle of family voluntarism. It should be considered acceptable only so long as no segregation is required by law or is otherwise officially imposed, and so long as families which wish to send their children to more integrated, centrally-controlled schools are not only free to do so, but equally encouraged and supported.

Decentralization and community control are no panacea. Nothing is known to be a panacea. If anything were, we would, I trust, concentrate all our resources and all our efforts on it. But we know of no single technique that is sure to produce the best and most acceptable education for everybody, and that is why, except for the process of desegregation, all the federal government can now do is aid diverse efforts voluntarily undertaken on the local level. My plea is simply that the bill ought specifically to make provision also for aiding decentralization and community control as one of the efforts that may be locally undertaken on a voluntary basis to reform and improve education in the public schools.

As the President said in his statement of March 24: "An open society does not have to be homogeneous, or even fully integrated. There is room within it for many communities. Especially in a nation like America, it is natural that people with a common heritage retain special ties; it is natural and right that we have Italian or Irish or Negro or Norwegian neighborhoods; it is natural and right that members of those communities feel a sense of group identity and group pride." It is equally natural and right that they should sometimes wish to control their own schools, and to enhance the sense of group identity and group pride through the educational programs of those schools.

A word as to bussing. It is in itself, in my judgment, a false issue. The proper questions are to what end it is used, by whom, and how. Desegregation may sometimes require bussing, just as segregation imposed by law sometimes required it. This is particularly true of school districts that cover a large geographical area and are sparsely populated. Elsewhere, efforts to alleviate racial imbalance, or the operation of inter-racial programs may require bussing. Throughout, this bill offers assistance. It does not prescribe methods. I see no reason why bussing, when undertaken pursuant to a desegregation order or elsewhere voluntarily, should not be assisted if it is used as a means to an end that this bill supports. Hence I welcome Sec. 6 (g) of H. R. 17846.

Senator SPONG. Now, I would say that I don't believe these are complicated legal stratagems and compromises. This bill is not complicated. I can understand having some difficulty with it, since you are not a lawyer. I apologize to you for the mistakes in the section numbers. But on balance it is not complicated.

Its provisions are quite simple. It is based on principles which have been approved by the courts. The transfer provision has been put in operation in the whole State of Georgia as a result of a three-judge court decision affecting the entire educational system in the State of Georgia.

The neighborhood school is certainly something that all of us understand, and it does not seem at the present time to be in peril anywhere, but in the southern part of the United States.

SENATOR PELL. But do we all understand what is meant by the term "unitary school system"?

Senator SPONG. I will come to that and address myself to Mr. Greenberg's comments, but I did want to say that I don't share Mr. Mitchell's views, although I certainly welcome them, I don't share his view that this is particularly complicated.

As far as Mr. Greenberg is concerned, he presented three basic criticisms. He said: "The neighborhood schools should not be elevated to the status of national policy."

I submit to you that with the exception of the South the neighborhood school is national policy, although not written into law. We have to consider in weighing the advisability of a neighborhood school, the fact that it is the most logical unit of organization, its convenience is indisputable to parents, black and white. It avoids the necessity of spending huge sums for transportation. The latter particularly relates, Mr. Chairman, to elementary school children 6, 7, and 8 years old, who may have more important educational needs than busing and where money could better be spent on projects and educational endeavors than on transportation.

Diversity, which I think is a genuine concern, can be brought into neighborhood schools, either through special projects or through the transfer right.

Now the second point made by Mr. Greenberg is that he doubts that local school officials will demonstrate food faith. This bill has built-in provisions to assure through court proceedings that good faith is recognized.

I think in Congressman Preyer's addendum that he addressed himself to this particular point. I would ask him in a minute or two to comment, but I point out that the variation section of the bill, that is the section that allows a variation from the neighborhood school policy, is not dependent on the good faith of local officials, although they have the burden of proof in demonstrating good faith, but on the fact that the variation does not result in assignment on the basis of race or color.

Now, third, and this is what you pointed out, Mr. Chairman, Mr. Greenberg says that there should be no attempt to define a unitary school system, that instead a case-by-case approach takes account of different situations and permits various options and remedial actions.

This may be true in some cases, but what do we have now for a definition of a unitary school system? We have nothing except the rhetoric of the Green decision, which says we should combat, eliminate segregation, root and branch. That is rhetoric. That is not any definition of what a unitary school system is.

The *Georgia* case that I commented upon goes into much greater definition insofar as a unitary school system is concerned; and in this legislation, we have borrowed from that case because someone has to know what a unitary school system is in order to eliminate existing confusion.

School boards and those who represent the school boards have to have some guidance and some direction concerning the definition of a unitary school system. We don't have it at the moment, and I disagree with Mr. Greenberg's suggestion that we should not have a definition. I think that there ultimately will have to be some definition that all school officials can understand. The Supreme Court may or may not provide it later but at the moment this legislation is the only game in town which attempts to define a unitary system.

Mr. Chairman, may I ask Congressman Preyer to comment on the good faith part of Mr. Greenberg's criticism. Also, Mr. Chairman, I would like to note that Mr. Greenberg acknowledged that his criticism was general rather than specific. Consequently, in discussing these three points, I have addressed myself to generalities.

Representative **Preyer**. First, I would say that Mr. Mitchell and Mr. Greenberg have been valiant fighters on the frontiers of school desegregation through the years, and they have earned their right to be angry.

I think, however, the question before us is, "What is the wisest course to pursue among the many alternatives for us?"

The bill addresses itself to that question, and I think that is the question we have to deal with without letting our anger or our suspicions, which may have been justly aroused from past actions, to cause them to think, "Well, any bill dealing with the schools is a step backward."

I don't think that is the case.

One point I think they overlooked that Senator Spong mentioned is that in the definition of a unitary school system, to meet that test, the first thing a school has to do is to show, one, that the school board has in good faith discharged their affirmative duty under subsection (A).

Subsection (A) says that all persons exercising administrative authority over the public schools have the affirmative duty to eliminate segregation or any other discrimination based solely on race in public schools subject to their authority.

So, first, you have to meet the test of good faith compliance. This means that even if a school district is in technical compliance with the other aspects of this plan, the court still has the right to say whether or not they have acted in good faith.

In other words, the court can say, "Yes, you have met all of the technical features of the plan, but I know this school board, you sat here for 15 years, and you have done nothing; therefore I am throwing the plan out and saying you did not exercise good faith."

So this good faith compliance feature gives the courts the right to deal with the kind of situation that worries Mr. Greenberg and Mr.

Mitchell, I think they fear that if you define a unitary school system, that this definition will be used by Southern school boards as an excuse to just get by with minimal standards, technical compliance, and yet be violating the spirit of the law. The good faith provision is in the bill to prevent the kind of thing Mr. Mitchell and Mr. Greenberg fear, not to give an "out" to reluctant school boards. A school board cannot just say, "we have acted in good faith." Whether they have or not is a question of fact for the Federal courts.

Senator PELL. Senator Eagleton.

Senator EAGLETON. Thank you, Mr. Chairman.

First, I would like to pick up a couple of loose ends before I question you, Senator, if I may, about the guts of your bill, which, as I read it, is in section 2 insofar as the definition of desegregation is concerned.

Senator Pell asked you about transportation and whether it shall be provided, and I took your response to mean that only the costs of necessary transportation will be provided to the student; however, the bill reads, in section 3(b) : "Transportation which may be required to effectuate the right of transfer under this section shall be provided." I take that to mean physical transportation.

Senator SPONG. Senator Eagleton, my answer was to a hypothetical example that Senator Pell gave me of 10 different people going in different directions.

As for the provision of transportation, this would be an administration determination. I did not mean, in replying to Senator Pell, to say that there would be no instances contemplated under the bill where a school division could not provide vehicles. I just mean that the provision is limited.

Senator EAGLETON. I read it the same way Senator Pell did, that if even one student wanted to transfer from, say, an inner city school on the south side of Chicago to a white or more white school in other areas of Chicago, and he were the only student desiring such transfer, the way section 3(b) reads they would have to provide, as Senator Pell said, a minibus, or at least a Honda, to get them up there, but anyway I think it could be amended to clarify that.

I want to get on the question of good faith which perhaps troubles me as much as anything, or any portion of your bill, Senator.

As I read it under section 6 (2), you permit activities involving constitutional rights to be judged on the basis of good faith, and then you make "good faith" a question of fact to be determined by the trial judge. I think the track records of some school boards, and the track records, I must say, Congressman Preyer, of some Federal judges, is not too good on the question of good faith.

Congressman Preyer uses the illustration of an alert, sensitive Federal judge who says, "You have complied with all of the technical requirements spelled out within the parameters of the bill; however, I detect less than a full-faith effort, and therefore I am going to require you to do something more."

I will pose to you the hypothetical situation of a Federal judge who takes an opposite tack and with a gleeful smile says, "You save fulfilled, at least insofar as the printed word is concerned, minimal technical requirements of the bill and I will require you to do nothing more."

I am a little troubled, obviously, by the question of good faith.

Representative **Preyer.** Senator Eagleton, if I may answer, I think there is this clear answer to your problem, that though the question of good faith is a matter of fact for the district judge in the first instance, the Supreme Court is not bound by the finding of the lower court on that. The lower court sits as a court of equity and the Supreme Court is not bound by it, and it can reverse that finding of fact, as it did in the *Green* case. There is no way to guarantee that a judge will not abuse the law. But the right of appeal here on the finding of fact is clear.

So that I think if you have the wayward judge who goes off of the track, he will be quickly corrected by the Supreme Court. The *Green* case makes it clear that there is nothing to fear on this score.

Senator **Eagleton.** We are talking about constitutionally guaranteed rights—the 14th amendment—so why should good faith in the enforcement of constitutionally guaranteed rights be a finding of fact?

Representative **Preyer.** I think you need the test of good faith and as a finding of fact here, as an escape hatch, to avoid any constitutional clash. This provision, I think, makes the bill safe constitutionally. Thus, the court is told to have regard to the specific provisions of the bill but if it should find a case of bad faith compliance which is technically within the provisions of the bill, it does not have to declare the bill unconstitutional to get at that problem.

It can say, "We find as a fact there is bad faith there, and we will strike it down," and it does not strike down the whole bill.

(The statement of Mr. Pryer referred to earlier follows:)

STATEMENT OF HON. RICHARDSON PREYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA BEFORE THE GENERAL SUBCOMMITTEE OF EDUCATION OF THE COMMITTEE ON EDUCATION AND LABOR, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C., THURSDAY, JULY 16, 1970

Mr. **Preyer.** Thank you, Mr. Chairman Pucinski. I want to express my appreciation for the opportunity to appear before this distinguished committee on behalf of H.R. 16484.

* * * * * * *

To take up my statement, Mr. Chairman, the first question I think we would ask about a bill of this sort is should Congress legislate in this field, or leave it up to the Supreme Court?

Should Congress speak now on the subject of a national school desegregation policy? Almost everyone will agree that there is no one clear national policy on desegregation of our schools, and that in the confusion different areas of the country are pursuing different policies.

The lower Federal courts have given conflicting interpretations of what the Constitution requires. The Supreme Court has remained silent, so no one knows which lower court interpretation is correct. HEW is free to follow one or another course, and freely does so.

The law on school desegregation is in the process of being formed. We are discussing in this country the question of what the law ought to become. (We are not arguing the question of whether the law should be enforced or whether it should be obeyed; the answer to both these questions is clearly yes.) Until the Supreme Court lays down with finality what the law is, we are all entitled to participate in this process of determining what the law should be.

The President has made his contribution in his statement of March 24, 1970. Congress, speaking as the representative of the people, should now make its contribution.

(Brief summary of the bill follows:)

H.R. 16484—National School Desegregation Act of 1970

Section 1.—Defines "segregation" as de jure segregation.

Section 2.—Would give any student the right to transfer to another school if his transfer would further integration. This section would also authorize civil actions in Federal courts to enforce this right.

Section 3.—Would require school boards to provide equal educational opportunities to students in schools with racial, color, or national origin concentrations, This section lists examples which might evidence denial of equal opportunities.

Section 4.—Would place upon all persons exercising administrative authority under State or Federal laws over public schools an affirmative duty to eliminate segregation or any other discrimination based solely on race, and to correct the present effects of past racial segregation or discrimination.

Section 5.—Contains a definition of "unitary school systems."

Section 6.—Would authorize civil actions in Federal courts to force school districts to become unitary school districts as defined in Section 6.

Mr. Preyer. This bill then is not offered to undo any existing law. It is not offered to turn back the clock. The question before the country today is, what is the wisest course to pursue of the various alternatives open to us? Our bill represents some of the best thinking available in the country on that question.

It was drafted by Alexander Bickel, Kent professor of constitutional law at Yale University, after consultation with many people. It also represents the commonsense of our people.

Before discussing what the law ought to be, let's look at what the law is. The *Brown* case in 1954 clearly stated that official segregation must go. That much was clear. About 2 years ago the law reached a turning point. At that time, practically all official segregation was abolished, pursuant to the Brown decision.

The legal structure that embodied it was destroyed and the idea repudiated. Clearly, there is no question of the United States, or any section of it, condoning these old racial policies.

But the abolition of official segregation did not automatically lead to integration. What should be our policy in these circumstances? How far do we go in forcing integration?

In pushing beyond the abolition of official segregation to increase integration in schools, it is becoming clear that in many areas we are doing severe damage to our educational system and creating profound disruptions in our society.

There is need for a clear and wise national policy on desegregation.

One proposed policy is to go to mathematical racial balance. For example, if a school district contains 60 percent whites and 40 percent blacks, each school in the district should contain that ratio of white and black pupils.

What is wrong with this system?

First, it requires massive cross busing with all of the attendant educational and social disruptions. This isn't something that is done once and people then get used to; it occurs anew each school year. It is very difficult to stabilize a school system with such a system which requires an annual rearrangement of all of the pupils.

Furthermore it is very difficult to see how this system of mathematical balance could possibly work in our large cities. I suggest that it is both unwanted and unworkable.

Second, this system is unfair because the law presently permits those who can afford it to flee to private or suburban schools.

This not only puts the entire burden of integration on the family which is too poor to flee, it often results in less integration. What results is resegregation rather than integration. For example, in Atlanta, which after a number of years of strenuous efforts to integrate the schools actually ended up with less integration as a result of whites fleeing to the suburbs.

The third thing wrong with mathematical racial balance is that some blacks want the choice of not being assimilated in a school system run by whites (so long as they are free to go to white schools if they choose). Many blacks do not feel this way, but why should all blacks be forced to attend school systems run by whites if it is against the wishes of some of them?

Fourth, no educational benefits automatically result from mixing schools on a mathematical racial balance. We are beginning to learn some things about the educational results of integration (although our knowledge in this field is definitely ambiguous and uncertain at the present time). For one thing, Dr. Coleman and Dr. Pettigrew and others have told us that there is no educational benefit resulting from mixing low income groups of different races. The educational benefit comes from mixing low-income groups with middle-income groups of either race.

Mixing of low-income groups only is generally what happens in our larger cities where racial balance is attempted. Yet we know the best educational results usually are obtained where there is a predominant middle class milieu. Because of the socioeconomic level of blacks in many areas, this usually translates into a majority of white children for the best educational results. Thus in a rural population where the ratio is 60 blacks to 40 whites, for example, the best educational result occurs where the whites are made the majority in integrated schools as far as the number of whites can be made to go around, which means that there will be some remaining schools that are all black. A mathematical formula in this example which would make all schools 60 percent black and 40 percent white means every school in the system suffers educationally.

The mathematical formula is not the answer. A system must be devised which is flexible enough to tailor different situations to achieve the best educational results, and which rests on some form of group voluntarism, rather than forcing all into the same pattern.

This is what I beileve our bill does. Just what does it do?

First, it sets a national policy on school desegregation that would not only clear up the present confusion on just what is our policy, but it would also eliminate the morally indefensible situation of one policy for one section of the country and another policy for another section.

Second, it declares that the aim of the law remains the disestablishment of segregation, but not the achievement of racial balance by special zoning, school pairing or busing schemes.

Third, it creates a national right in any public school pupil to transfer from the school in which his race is in the majority to one in which his race is in a minority. Transportation, if needed, would be provided at public expense.

Fourth, it commits the Federal Government to the equalization of educational opportunities and facilities, and it sets criteria for determining when educational opportunities and facilities are in fact equal. (Similar teacher-student ratio, student services, per pupil expenditures, etc.)

Fifth, without disturbing the authority of the Federal courts and HEW to measure the good faith of a desegregation performance, the bill would define the end result which in a term used by the Supreme Court but left by it undefined, is called a unitary school system.

The bill says that a unitary school system is achieved either by a genuine neighborhood zoning of school attendance areas, that is, each child may attend the school nearest where he lives, so long as this is an honest system which does not go in for any gerrymandering of school districts lines, or, by mixing the races in the schools in a ratio that within a substantial permissible range, bears a relation to the proportion of one race to the other in the total school population in a district.

Voluntary efforts by school boards to achieve better racial balance would, of course, be permitted.

Exceptions would be permitted when authorized by Federal courts to forestall resegregation of the schools thus preventing the hardening of the lines of residential segregation.

North or South, once a school system has reached a unitary state Federal courts and HEW would retain jurisdiction to pursue and cure any measure designed to bring about any forced separation of children in the schools solely on the basis of race. In other words, the courts, while not forcing integration will make certain that there is no backsliding on desegregation.

The neighborhood school concept means there may be some all white or all black schools arising out of residential housing patterns. This leads some people to fear that the effect of the bill be to "freeze" some blacks into what would amount to permanently segregated schools though the segregation arose from residential housing patterns and not official action.

There are several considerations here however, which will tend to work against any such freeze. For one thing, the "majority-minority transfer" provision in the bill prevents anyone from being "locked-in" in such a school against his wishes.

Also, any all black facility must meet the standards of equal educational opportunity. Furthermore the bill here meshes with the administration's Emergency School Aid Act of 1970, an act which I support strongly.

The act provides extra resources to aid schools which are making a good faith effort to overcome conditions of racial imbalance. Presumably these funds would not be available to an all white or an all black school.

Thus school systems are encouraged to eliminate such all white or all black schools. It is using the carrot rather than the stick. Also, the innovative new educational measures mentioned in the President's statement of March 24 are useful here. These new approaches would provide for a portion of a child's educational activities to be shared in various ways with children from other schools. Breaking down racial isolation is a critically important goal of our society. There are alternative and better ways of achieving it other than massive busing.

"Segregationists," says Prof. Charles Hamilton, a distinguished black intellectualist, "must be fought at every turn. But in our determination to defeat them let us not devise plans that are dysfunctional in other serious ways. The principle is a free and open society, and we can pursue several realistic routes to its achievement." I believe this bill carries out that principle.

Congress should speak now and not wait for the Supreme Court. What the Court will do cannot be predicted, and the Court could, in any case, scarcely do it before spring or early summer.

The Congress shares with the Court the authority and responsibility to enforce the 14th amendment.

A statutory declaration by Congress of what the law of school desegregation now means and does not mean would be at least as beneficial as an attempt by the Court to clear up the uncertainty.

As Alexander Bickel has said:

> The question of the desirability and possibility of racial dispersal is enormously complex. It involves a judgment of the proper priorities in the allocation of material, political and other resources. Whatever else may be said about it, it is surely beyond the capacity of courts to solve effectively.

It may be beyond the wisdom of Congress to solve, but it is the kind of problem involving broad interests, that requires us to try.

I would now like to present Dr. Phillips and Dr. Proffitt, who will testify to the nature of our problems in North Carolina, if that is agreeable with the committee.

Mr. PUCINSKI. Thank you very much.

Senator EAGLETON (presiding pro tempore). Thank you, Congressman.

I am sorry to say the buzzer has buzzed once, which means a vote, and therefore we will recess for such time as necessary to cast the votes and be back, I would presume, in say 15 minutes.

(A brief recess was taken.)

Senator EAGLETON. The committee will once again be in order.

Senator Spong, you seek to have your bill read as a whole, and I think a piece of legislation should be read that way. However, we are dealing with rights under the 14th amendment, which are subject, of course, to enforcement by the courts, and the courts may and often have differed on various definitions and may well differ from your definition, or the bill's definition in section 2, of the word "segregation" or of the words "unitary school district," so let me ask you this: Is it not possible that a court would interpret the word "segregation" in a broader sense than your bill does, perhaps at the very least to include segregation resulting from housing, wherein public officials played a part in the accomplishment of that segregation?

My question is: Is it not possible that a court would broaden the rather narrow definition of "segregation" as contained in section 2, broaden it by reason of the 14th amendment?

Senator SPONG. I think it is possible. The language of section 2 is taken in its entirety from the *Brown* decision, which is now the law.

I might say to you that I have heard, although none has addressed a question to me, some objection to the word "solely," for instance, which is part of the *Brown* decision. I don't think that makes a great deal of difference, whether it is in there or not, but the bill, as of now, has the language of the *Brown* decision.

In answer to your question, yes, it is possible that in the future the law might be such that there would be a different or wider definition.

Senator EAGLETON. This gets us, of course, into the realm of judicial speculation, which is the rankest form of speculation, but I think it could be well argued that segregation as defined by the *Brown* case, as defined by section 2 of your bill, the *Brown* case dating back to 1954, 16 years ago, has now taken on a broader definition.

If it has, if other factors are to be in the mix, in terms of defining segregation, it seems to me that it might negate your whole effort to have the neighborhood school established as an acceptable standard. But I guess all we can say on that is we have to await future court decisions.

Senator SPONG. I would not for one moment presage what the court is going to do.

I wish they had seen fit to act earlier than they have, because I think there are many unanswered questions, and the one you have posed is one of them.

Senator EAGLETON. Let me ask you this: In your bill, you seek to protect neighborhood schools in southern cities, and in all cities, for that matter. It is a nationwide bill.

Senator SPONG. No, I seek to put neighborhood schools on the same basis in all parts of the United States.

Senator EAGLETON. On the same basis, North, South, East, and West, and you buttress your definition of what a neighborhood school is, and the racial mix within that school, in your section 2 definition of "segregation." But you also go on and in section 5(b) state that the district must both eliminate segregation and establish a unitary school system. The definition of "unitary system" as a neighborhood system would not, in my judgment, protect cities such as Charlotte.

Do you have comment on that?

Senator SPONG. Why would it not protect Charlotte?

Senator EAGLETON. Well, because, if you apply 5(b), I think that when you get into the definition of what a unitary system is, the antecedent history of the Charlette school district then engages as a factor in defining what is a viable, constitutionally functional neighborhood school.

Senator SPONG. Well, first of all, you would agree with me that we have not been told by any court that a neighborhood school per se is in any way contrary to interpretations of the 14th amendment?

Senator EAGLETON. Not per se.

Senator SPONG. We have been told, on the other hand, that the neighborhood school is to be judged only as part of a unitary school system, so what we have provided for, based primarily on educational and economic factors, is the preservation of this system, with the variance involved, which would be available to Charlotte, where voluntarily that board might do anything it wished, and we think that the concept is further guarded by the right of transfer, by the good faith provision, and by the legal rights given under this bill to any individual who does not think his rights have been protected under the 14th amendment.

What we are saying, in effect, is that we must not lose sight of the educational values of the neighborhood school.

It can be argued that there are disadvantages, but until the courts specify differently, I believe that the preservation of the school, provided it is consistent with the interpretation of the 14th amendment, is educationally sound, and probably economically desirable.

Senator EAGLETON. Well, there are some cases, especially in the fourth circuit, *Charlotte* case, *Norfolk* case, which indicate that in a formerly de jure school system, adoption of a neighborhood school policy is not per se compliance with either title VI or the 14th amendment, and, if I read those cases correctly, under the circumstances, so as to avoid the question of your bill's constitutionality is it not likely the courts would reject your interpretation or definition of "segregation" and hold simply to the definition in existing law as defined in those cases?

Senator SPONG. Well, of course, the *Charlotte* case, which you mentioned, is going to be heard, and I think some of these questions will be answered.

I don't know that until the question is answered by the court that I can answer your question, other than to say that it is possible, but, as of now, there is certainly nothing in the law that I see that is inconsistent with the definition used here, or with the preservation of the neighborhood school concept, providing individual rights under the 14th amendment are protected.

Would you like to comment?

Mr. PREYER. To say "this bill would not cover *Charlotte's* case" can only be based on the argument that because Charlotte had a dual school system 15 years ago, now it must do more than other northern cities in order to show good faith in eliminating segregation. It is conceivable that a court would require Charlotte, as a symbol of its eradication of the dual school system, to do more than some other cities. But somewhere the de jure-de facto distinction must end.

Fifteen years ago Charlotte had a dual school system, and since that time I suppose Charlotte's population has doubled and population movements have drastically changed its residential patterns, all under a new set of school laws, so that I don't think a city like that can be hounded down forever and made an example of, to say, "This is how serious we are about eliminating segregation. Because you once were segregated, we will make you do much more than other cities." Must the sins of the parents be forever visited on the children? Segregation in the South is like a family funeral. We know it's dead and can't come back to life. What we want from the outside world is some decent respect.

I think Charlotte, when the courts look at the facts, will find, "Yes, we had a dual school system, and we have made a good faith effort in 15 years to wipe that out."

The kind of segregation we have now is residential segregation, no different from other areas of the country, no different in its effect on education, and it ought to be treated the same way.

Senator JAVITS. Mr. Chairman, would you yield for a minute?

Senator EAGLETON. Yes.

Senator JAVITS. I may not be able to stay too long. I wish to inform our colleagues it is well known that I am very devoted to the concept of school desegregation, that it is very unlikely I would be for this bill, but I wanted my colleagues to note that does not lessen my interest in it, or desire to know about it and learn from it.

Senator SPONG. I very much appreciate that, Senator Javits. Your views are very well known to me, and I respect them.

I would like to say to you and Senator Eagleton that we have brought the chairman of the Norfolk School Board and the vice chairman of the Richmond City School Board, and the superintendent of schools in Burlington, N.C., here to be heard today.

Our testimony has taken some time, but I would want, in the interest of the record on this bill, for you, Senator Javits, to have every opportunity not only to review the record, but to submit any questions that you may have, since you say your time is limited this morning. Without telling the chairman how to conduct his committee, I would very much appreciate it if our other witnesses could be heard. I think the chairman of the Norfolk School Board, and the district judge in the city of Norfolk, have had as much experience in this field as perhaps any locality in the United States, and I would want very much for those people from Norfolk and Richmond and Burlington to have some opportunity to be heard.

I would hope that you could stay to hear them.

But I invite from you, for the record on the bill, any statement or questions that you have to say, after reviewing what we say here today.

Senator JAVITS. Thank you very much.

Senator EAGLETON. I have one brief question before we hear those witnesses, if I may, and my comment takes up where Senator Javits left off his remarks, and I don't want my questions of you, Senator Spong and Congressman Preyer, to indicate I find your bill to be totally inane, but quite to the contrary, I think you are to be commended for not just talking about this sensitive question, but in reducing to printed form a provocative, interesting legislative proposal that at least attempts, in a positive way, to cope with a national dilemma.

I think Senator Javits, although he might be constrained, if your bill were up for a vote, to vote against it, I think he has paid tribute to a constructive approach rather than a negative approach, and I want to join in that compliment.

One final question on your comparability section, section 4, I think it contains an excellent list of indicators of noncomparability. This is an interesting compilation of the criteria, so to speak. However, the section states only that violation of these indicators contained in section 4, beginning on page 3 and continuing on page 4, may be considered a denial of equal educational opportunity.

I ask, why the words "may be considered," rather than the words "shall be considered a denial of equal educational opportunity"?

Senator SPONG. I would have no objection to the word "shall" being put in.

Senator EAGLETON. Thank you.

Senator PELL. Thank you.

I believe that the Senator from Virginia is trying to move ahead in this field and demonstrate that there are people of good faith in all parts of the country. I commend him for his efforts in this regard and congratulate him on his perseverance in getting the bill pushed ahead so far so quickly, and for Congressman Preyer I say that equally.

STATEMENT OF DR. BRANK PROFFIT, SUPERINTENDENT OF PUBLIC SCHOOLS, BURLINGTON, N.C., VINCENT THOMAS, CHAIRMAN, NORFOLK CITY SCHOOL BOARD, AND A. C. EPPS, ESQ., VICE CHAIRMAN, RICHMOND CITY SCHOOL BOARD

Senator PELL. We shall now proceed to the next witnesses, Dr. Brank Profitt, superintendent of public schools, Burlington, N.C., Vincent Thomas, chairman of the Norfolk City School Board, and A. C. Epps, vice chairman of the Richmond City School Board.

Senator SPONG. First, I thank you, and may I ask at this point the petition for writ of certiorari in the Norfolk case, which is a brief one, be made a part of the record at this point.

Senator PELL. Without objection, it is so ordered.

(The information subsequently supplied follows:)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969

No.____

THE SCHOOL BOARD OF THE CITY OF NORFOLK, VIRGINIA, ET AL., PETITIONERS

v.

CARLOTTA MOZELLE BREWER ET AL.,

AND

UNITED STATES OF AMERICA, RESPONDENTS

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit and Motion to Advance

TOY D. SAVAGE, JR.,
ALLAN G. DONN,
WILCOX, SALVAGE, LAWRENCE,
DICKSON & SPINDLE,
Virginia National Bank Building,
Norfolk, Va.
LEONARD H. DAVIS,
City Attorney,
Norfolk, Va.
Attorneys for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. ——

THE SCHOOL BOARD OF THE CITY OF NORFOLK, VIRGINIA, ET AL., PETITIONERS

v.

CARLOTTA MOZELLE BREWER ET AL.,

AND

UNITED STATES OF AMERICA, RESPONDENTS

MOTION TO ADVANCE

Petitioners respectfully move that the Court advance its consideration and disposition of this case. It presents issues of national importance which require prompt resolution by this Court for the reasons stated in the annexed petition for a writ of certiorari. It would be desirable for the issues to be decided before the beginning of the next school term in September 1970 in order to guide the Norfolk School Board as well as the many courts and schol boards now making plans for the coming year and to reduce somewhat the possible necessity for reorganization of systems after the 1970–71 school term is underway.

Wherefore, petitioners pray that the Court:

1. Advance consideration of the petition for writ of certiorari and any response thereto during the current term, or if need be during the Court's vacation or such special or extended term as may be convenient; and
2. If the Court determines to grant the petition for certiorari, arrange such procedures as will permit prompt decision on the merits as the Court may deem appropriate.

Respectfully submitted.

TOY D. SAVAGE, JR.,
ALLAN G. DONN,
WILLCOX, SAVAGE, LAWRENCE,
DICKSON & SPINDLE,
Virginia National Bank Building,
Norfolk, Va.
LEONARD H. DAVIS,
City Attorney,
Norfolk, Va.
Attorneys for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. ——

THE SCHOOL BOARD OF THE CITY OF NORFOLK, VIRGINIA, ET AL., PETITIONERS

v.

CARLOTTA MOZELLE BREWER ET AL,

AND

UNITED STATES OF AMERICA, RESPONDENTS

Petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit

The School Board of the City of Norfolk, Virginia, petitioner, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on June 22, 1970.

OPINIONS BELOW

Although this proceeding has been pending for more than thirteen years, resulting in a substantial number of opinions of the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit, the opinions of the courts below directly preceding this petition are as follows:

1. The opinions of the Court of Appeals filed June 22, 1970, not let reported, are as follows:

(a) Opinion for the Court by Judge Butzner (Appendix hereto p. 1).[1]

(b) Opinion of Judge Bryan specially concurring (App. 13).

2. Memorandum Opinion of the United States District Court for the Eastern District of Virginia, quoted at 308 F. Supp. 1274 (App. 16).

3. Memorandum Opinion of the United States District Court for the Eastern District of Virginia, reported at 302 F. Supp. 18 (App. 58).

JURISDICTION

The judgments of the Court of Appeals were entered on June 22, 1970 (App. 15A and 15B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. In a school system in which there is no current racial residential discrimination, but in which the application of neutral and objective standards to the assignment of pupils would result in a number of all Negro and all white schools because of racial residential patterns,

(a) is it constitutionally permissible for the School Board to take into account the fact that once the ratio of Negro pupils to whites passes beyond a critical point the benefits from integration are completely lost in determining the extent of the affirmative action to be taken to achieve integration?

(b) is the constitutionality of a plan for desegregation principally determined by the degree of success in obtaining the racial mix of pupils or by the degree of success in providing equality of educational opportunity for all pupils where both purposes cannot be simultaneously achieved?

(c) does good faith implementation of governing constitutional principles require racial balancing in each individual school throughout the system, comprised of many different schools, where it is freely conceded that massive compulsory busing will be required?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

1. Introduction.

The Petitioners are seeking a review of an *en banc* decision of the United States Court of Appeals for the Fourth Circuit, reversing and remanding an Order of Walter E. Hoffman, Chief Judge of the Eastern District of Virginia, which had approved, in most aspects, the long range plan for the integration of the Norfolk school system.

2. Proceeding Below.

Judge Hoffman's opinions followed hearings extending over many days during which he received evidence and made meticulous findings with respect to the housing patterns and demography of Norfolk and adjacent communities, the educational principles of the School Board plan, the financial and transportation resources of the school system, and the feasibility of alternative proposals advanced by the respondents. He found no racial discrimination by the School Board and that the School Board had affirmatively sought to obtain the maximum degree of equal educational opportunity within the capacity of the system.

---

[1] The appendix (App.) of opinions below is presented in a separate volume because it is voluminous.

The Court of Appeals, without holding that the District Court's findings were clearly erroneous, set aside the judgment of the trial court and directed that a new plan be filed by July 27, 1970, and implemented by September 19, 1970. Although the Court of Appeals did not expressly order the racial balance of the schools, that appears to be the effect of its holding, and such a result is beyond the capacity of the Norfolk school system.

This petition is filed four days after the entry of judgment. Precedent of other similar cases does not indicate that any stay is to be expected. Irreparable disruption caused by a "best efforts" implementation of the order of the Court of Appeals will be so erosive of the school system as to place in jeopardy the implementation of the School Board Plan in the event the District Court Order is reinstated.

3. Demography of Norfolk.

The Norfolk system is generally typical of southern school systems of its size. It consists of 56,000 students in 72 schools, with a 6–3–3 pattern including 56 elementary, 11 junior high and 5 senior high schools. At the elementary level, 44% of the students are Negro. Over all, the system contains 42.4% Negro students.

The City of Norfolk has a population of approximately 300,000 and is 61 square miles in area. 80% of the Negro population of Norfolk is concentrated in a large densely populated area in the south central sector of the City.

The City of Norfolk has no bus system for the transportation of pupils to and from the schools. Approximately 8,000 students, only a few of whom are at the elementary level, now use public transportation at their own expense.

The District Court found that evidence introduced fell short of establishing discriminatory racial patterns about the City and that "unless a spot of the disease poisoned the entire city, there remained other areas in Norfolk which could not be considered *de jure* constituted." 308 F. Supp. at 1303; 302 F. Supp. at 27. Whether or not any area of the City has a racial pattern which originated in discriminatory action, there is no significant governmental or private discriminatory action restraining free residential patterns at this time. 308 F. Supp. at 1307.

4. Development of Long Range Plan.

To assist its own Director of Educational Research and Planning, Dr. John C. McLaulin, the School Board obtained the services of Dr. James Bash, Director of the University of Virginia Desegregation Institute, operated under funding by the Department of HEW, and Mr. Howard O. Sullins and Mr. Albert Tippett, representatives of the Department of HEW. There came to the attention of the Board a substantial body of learning, recently developed and based upon the analysis and definition of the relationship between integration and educational opportunity. Among the literature primarily influencing the development of the plan by the Board were the following:

1. *James S. Coleman, "Equality of Educational Opportunity,"* (1966), based upon a broad and exhaustive survey carried out pursuant to the Civil Rights Act of 1964 by the United States Office of Education and generally known as the COLEMAN REPORT. (SBX, April No. 1);
2. *Racial Isolation in the Public Schools Vol. 1*, prepared by the United States Commission on Civil Rights pursuant to request of the President and generally known as RACIAL ISOLATION. (SBX, April No. 2);
3. *Equal Educational Opportunity*, 38 Harvard Education Review, (Winter 1968), (SBX, April No. 4);
4. *Weinberg, Desegregation Research: An Appraisal* (SBX, April No. 3);
5. *Armor, School and Family Effects on Black and White Achievement: A Re-examination of the USOE Data*, (SBX, Oct. No. 24);
6. *Pettigrew, Advantages for the Disadvantaged in Equality of Educational Opportunity in the Large Cities of America: The Relationship between Decentralization and Racial Integration.* (Govt. Ex., Oct. No. 8);
7. *Wilson, Educational Consequences of Segregation in a California Community*, RACIAL ISOLATION Vol. II, p. 165. (SBX, April No. 2).

The Board became convinced that, aside from the requirements of law, integration provides the conditions for an improved educational program for the City as a whole. Norfolk's was the first system to formulate principles for a plan based on the best available social science data.

The basic principles adopted by the Board can be summarized as follows:

(a) Children of all backgrounds and races do better in schools with a predominant middle class milieu. The entire argument for the efficacy of desegregation in providing equal educational opportunity ultimately depends upon this simple truth and upon it also rests the ultimate success of any long range plan for integration.

Aside from the family background of the individual student, a factor which is beyond the control of the School Board, the social class[2] climate of the school is the single most important school factor affecting student performance and attitudes. (RACIAL ISOLATION, Vol. 1, p. 89). The social class climate factor is so powerful that it may be more important than all other factors combined.

(b) There is a high correlation between socio-economic class and race. While more than 60% of white America is middle class, only one Negro in four is middle class (whether defined by income, white collar occupation, or high school education. A comparable correlation exists in Norfolk. The significance of the correlation is that desegregation is required to provide a predominantly middle class milieu for Negro pupils.

(c) The beneficial effects of desegregated schools for Negro children are not linear; that is, Negro test scores do not rise evenly with increasing percentages of white children in the classroom. Achievement in classes with less-than-half whites is associated with scores not significantly different from those in all-Negro classrooms. The research shows that significant improvement does not begin until the school is at least half-white, and that a simple majority is not sufficient to obtain the desired benefits of desegregation. Instead there must be a clear, but not overwhelming, white majority. Dr. Armor's analysis of the COLEMAN REPORT data showed that the optimal point, taking into account both the social class and race effects is about 30% Negro.

(d) White students do less well in majority Negro schools than they do in majority white schools. The conclusion is a necessary corollary to the principle that children of all backgrounds do better in schools with a predominant middle class milieu.

(e) A plan for the City of Norfolk will work best to the extent that it arrives at 30% Negro in as many schools as possible and, for this reason, that percent Negro is considered optimal. The purposeful establishment of schools in which there are more than 40% Negro will not provide any improvement of educational opportunities in such schools for either white or Negro. In determining the effects of optimal desegregation, the inquiry is not limited to educational achievement. Rather, the concept of optimal desegregation is equally concerned with racial attitudes, racial behavior, racial preferences, and college and occupational aspirations.

The principles of the plan were applied to the circumstances of the Norfolk school system with the clear purpose of providing the maximum degree of integration which is feasible.

The development of the plan for elementary schools began with a geographical attendance area plan based on neutral and objective lines, with each student attending the school within the natural capacity zone in which his residence fell. The socio-economic data of each such zone was then carefully analyzed. With the use of this base data, the designers of the zones set about to achieve zones which were heterogeneous in terms of socio-economic class and race, rather than homogenous. Neither natural boundary lines nor community of interest of a given area was allowed to interfere with this purpose. Natural boundaries were departed from and neighborhoods were intentionally divided among different schools. Every plan or device suggested in any writing or by any consultant or by the NAACP or the Civil Rights Division was given mature consideration, and a number of such suggestions were incorporated. None of them was rejected if it was found to be currently feasible for the purpose of providing more integration than the plan which was adopted. A number of subsidiary concepts, such as the consolidation of schools, the closing of schools, and the changing of the location of schools, was adopted.

All of the experts testifying complimented the School Board on the job that was done. The degree of success was favorably compared with that which could be obtained by a computer. No one was able to point out a single instance in which lines were drawn to avoid desegregation. Because of racial residential patterns, it would not be possible, without massive cross busing, to create a much greater percentage of desegregation in the system. On the basis that the educational opportunity offered to Negroes in majority Negro schools would be no better and perhaps not as good as that offered in an all Negro school and that the opportunity offered to white students would be substantially less than that which would be offered to them in a majority white school, majority Negro elementary schools were not created. The intentional creation of a majority Negro school would provide a net loss to the community rather than a net gain in terms of the feasible achievement of the benefits of integration.

---

[2] The term "socio-economic class" more accurately expresses the meaning, but "social class" has been commonly employed with the same connotation in most instances.

No one is able to suggest any device which will effectively increase the results obtained by 20%, 10% or even 5%. The only alternative to the School Board plan recommended is the complete racial balance of every school in the system through massive cross busing. The physical obstacles to the racial balance at the elementary level through massive cross busing is beyond the capacity of the School Board.

REASONS FOR GRANTING THE WRIT

1. Introduction

Brown v. *Board of Education*, 347 U.S. 483 (1954), takes its place among the more important decisions of this Court because it determined the relation between segregation of public schools and equal educational opportunity. The Record in this case for the first time presents a clear and exhaustive analysis and definition of the nature of that relationship.

Brown I established the constitutional *right* of minorities to desegregated schooling and expressly based its determination upon the right to equal educational opportunity.

Brown v. *Board of Education*, 349 U.S. 294 (1955), and all of the subsequent cases decided by this Court essentially deal with the remedy which the Court felt to be realistically avaliable at the time of the decision. The relief granted by the Court in *Brown II* constituted a negative mandate, requiring the school boards to admit students to public schools "as soon as practicable" on a non-discriminatory basis, "with all deliberate speed." 349 U.S. at 300, 301. In more recent cases, culminating in *Alexander* v. *Board of Education*, 396 U.S. 19 (1969), this Court has removed the conditions of "as soon as practicable" and "with all deliberate speed" from the negative mandate. Further, this Court has asserted the affirmative duty of school boards to adopt the most "feasible" and "reasonably available" alternatives to affirmatively effectuate integration. *Green* v. *County School Board*, 391 U.S. 430 (1968); *Raney* v. *Board of Education*, 391 U.S. 443 (1968); and *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968). In view of the fact that circumstances in such cases all pointed in the same direction, this Court has not yet defined the nature and extent of the remedy provided by such affirmative mandate. It is submitted that, in arriving at that definition, it should be kept in mind that the constitutional right to be provided is equal educational opportunity and that mixing races is but a means to that end.

The conclusions of educational and social science with respect to the nature and extent of the relation between integration and education have in recent years been widely disseminated and, by and large, accepted. The Commission on Civil Rights quoted that "On the basis of its findings, the Commission has made recommendations which provide a basis for action by government at all levels; * * *." *Racial Isolation in the Public Schools Vol. I*, p. ix.

On March 24, 1970, Richard Nixon, President of the United States, issued a policy statement entitled SCHOOL DESEGREGATION: "A Free and Open Society." (116 Cong. Rec. S4351, Daily Ed., March 24, 1970). In that statement he said:

"Available data on the educational effects of integration are neither definitive nor comprehensive. But such data as we have suggest strongly that, under the appropriate conditions, racial integration in the classroom can be a significant factor in improving the quality of education for the disadvantaged. At the same time, the data lead us into several more of the complexities that surround the desegregation issue.

"For one thing, they serve as a reminder that, from an educational standpoint, to approach school questions solely in terms of race is to go astray. The data tell us that in educational terms, the significant factor is not race but rather the educational environment in the home—and indeed, that the single most important educational factor in a school is the kind of home environment its pupils come from. As a general rule, children from families whose home environment encourages learning—whatever their race—are higher achievers; those from homes offering little encouragement are lower achievers.

"Which affect the home environment has depends on such things as whether books and magazines are available, whether the family subscribes to a newspaper, the educational level of the parents, and their attitude toward the child's education.

"The data strongly suggest, also, that in order for the positive benefits of integration to be achieved, the school must have a majority of children from environments that encourage learning—recognizing, again, that the key factor is not race but the kind of home the child comes from. The greater concentration of pupils whose homes encourage learning—of whatever race—the higher the achievement levels not only of those pupils, but also of others in the same school. Students learn from students. The reverse is also true: the greater concentration of pupils from homes that discourage learning, the lower the achievement levels of all.

"We should bear very carefully in mind, therefore, the distinction between educational difficulty as a result of race, and educational difficulty as a result of social or economic levels, of family background, of cultural patterns, or simply of bad schools. Providing better education for the disadvantaged requires a more sophisticated approach than mere racial mathematics."

The quoted statement of policy of the United States is quite remarkably consonant with the policies promulgated by the School Board in its long range plan in June, 1969, and approved by the District Court on December 30, 1969, and here presented to this Court for consideration.

It is clearly established that the quality of educational opportunity offered to pupils of both races in schools which have a majority Negro is no better, if as good, than that offered to pupils of all Negro schools. It is difficult to find any situation in which integration has been successful in terms of educational opportunity or stability where white pupils have not been in a substantial majority. Whether or not Norfolk School Board and other school boards similarly situated are entitled to take this phenomenon of social science into account in determining the extent of affirmative action to be taken to achieve integration appears to be essential to the development of public education of this country at this time. Is a rule such as the one-man, one vote rule of the apportionment cases appropriate to the education cases? If it is not educationally desirable or even relevant that the racial composition of a school be a mirror image of the racial composition of the community, should such a goal be sought by any plan? These are among the basic practical problems to be resolved which are appropriately presented by this case.

2. The Opinion of the Court of Appeals

The opinions of the Chief Judge of the District Court deal in depth with the educational principles and the phenomena of social science with respect to integration and with the demography, financial, transportation and other resources of the school system. It was found that the School Board had affirmatively sought to obtain the maximum degree of educational opportunity within the capacity of the system.

The opinion of the Court of Appeals appears to be based primarily if not entirely upon the degree of success in obtaining a racial mix in schools. The word "education" is not mentioned on a single occasion in the majority opinion. The Court of Appeals failed to deal with the important questions set forth in this petition. Conclusions are arrived at in its opinion which are contrary to the findings of fact of the District Court without any acknowledgment thereof. The capacity and resources of the Norfolk school system are not delineated or discussed by the Court of Appeals, but the judgment would appear to call for action by the School Board beyond the capacity and resources found to exist by the District Court.

CONCLUSION

The reasons for the degree of success or failure of existing integration plans in attaining educational goals can be properly understood only by examination in light of the social phenomena explicated in this proceeding. Such success or failure of proposed plans can be accurately predicted by application of these principles of social science. The extent to which such principles may or must be taken into account under constitutional mandates has not been considered or determined by this Court. It is vital that such determination be made at this time.

The importance of the issues raised in this proceeding to the Norfolk school system are obvious. Although the circumstances and predicaments of each school system with respect to desegregation are to some extent peculiar to it, Norfolk fits a not uncommon pattern. The issues are also important to many other such similar school systems. The cases pending on petitions for writs of certiorari from the Cities of Charlotte, North Carolina, and Little Rock, Arkansas, together with the issues presented here appear to cover the spectrum of the most pressing problems requiring decisions by the lower courts, local governments, educators and minorities. For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted.

TOY D. SAVAGE, JR.,
ALLAN G. DONN,
WILLCOX, SAVAGE, LAWRENCE,
DICKSON & SPINDLE,
Virginia National Bank Building,
Norfolk, Va.
LEONARD H. DAVIS,
City Attorney,
Norfolk, Va.
Attorneys for Petitioners.

Senator PELL. If either of you two want to stay, Senator Spong and Congressman Preyer, you are welcome to come up with the subcommittee.

Senator SPONG. Thank you.

Senator PELL. Now, Dr. Profitt, Mr. Thomas, and Mr. Epps, I think it would be best if you came up together and gave your statements. Dr. Profitt will be first.

If you do not read the full text of your statement, you can be assured it will be printed in the record in full.

Dr. Profitt.

Dr. PROFITT. Mr. Chairman and members of the committee, I want to begin by thanking you for allowing me this privilege to appear before this distinguished committee this morning.

I would like to begin also with a disclaimer which I think might be appropriate. It is not my purpose here today either as a concerned citizen or as a practicing school administrator, to advocate turning back the clock in the field of school desegregation. I do not pretend that it is sufficient merely to wipe off the books statutes which created de jure segregation where it has existed, and then continue to operate the schools the same way as before. I do not believe that the adoption of a freedom of choice assignment policy, while the school system continues to operate largely as it did before, meets the constitutional and statutory requirements to desegregate.

In other words, I do not come here today in defense of tokenism.

The following case history is presented to show the urgent need for a coherent national policy to overcome the ambiguities and obfuscation which now are present in the area of school desegregation when dealing with Federal agencies.

During a 7-year period since I came to Burlington as superintendent, we have moved from a segregated operation to a unitary school system based on honest geographic attendance areas. We have racial balance in faculty assignments in all schools, and in student assignments at the junior and senior high school levels. Elementary pupils are assigned to schools serving the attendance areas in which they reside.

The HEW Office still questions, after 2 years of negotiations and numerous concessions on our part, the so-called racial identifiability of one elementary school in our district, but a Hearing Examiner on March 16, 1970, found us to be in compliance with the requirements of the Civil Rights Act of 1964 and its implementing regulations.

Since that time, we have moved to close one predominantly black school, and have made boundary changes in zone lines to get more black pupils in neighboring schools, but we still cannot settle with HEW.

The HEW Office for Civil Rights appealed the hearing examiner's ruling to the reviewing authority, even though the ruling seemed to be unusually well reasoned, and the hearing examiner was reputed to be one of the most respected and experienced in civil rights cases.

We found this to be somewhat difficult to understand, and made some inquiries into the process of the administrative proceedings open to school systems which failed to receive the blessing of the HEW Office of Civil Rights.

We learned that the policy of the Office for Civil Rights was to appeal routinely all unfavorable rulings of hearing examiners in school cases, without regard to the facts and the merits of the rulings.

We sought information from the Director concerning the handling of school cases which had been appealed to the reviewing authority. That is the next step above the Hearing Examiner, since the findings of fact by the Hearing Examiners seem to count for so little with the HEW Office for Civil Rights.

We learned, with some difficulty in trying to get the information, that at the time our case was appealed, the reviewing authority had decided 61 out of 61 such administrative appeals in favor of the Government, and against the school districts.

We understandably felt some concern about due process, in the face of this record.

We understand now that the reviewing authority has decided two cases in favor of the school district since the time of our first inquiry.

Following the appeal of our case to the reviewing authority by the HEW Office for Civil Rights——

Senator PELL. I must interrupt—excuse me—I am informed that there will be a rollcall vote at 12:20, indeed it may come earlier. Therefore we are under exceptional time pressure, and I wonder if you could abbreviate your remarks in favor of questions?

Dr. PROFITT. I will be glad to summarize, Mr. Chairman.

We have tried repeatedly over a 2-year period to reach agreement with the HEW Office for Civil Rights about the racial identifiability of one elementary school. We had come to a meeting in Raleigh, N.C., initiated by the Justice Department and the Department of Health, Education, and Welfare, where we understood there would be an attempt to resolve these questions.

We met with a so-called team there in conference, headed by Mr. Jerris Leonard. After the conference was over, and in a postconference conversation, Mr. Leonard told one of the State department of public instruction people he "agreed with everything Burlington said," and later on, according to the press, sent a memo to Mr. Stanley Pottinger in which he recommended that the Burlington plan be accepted as it was presented that day.

Now, we tried to get information as to how we differ from the President's statement in March of this year, and we were told by two Government officials, at least two, that that statement was "politics."

A lawsuit has been started in the State of North Carolina, brought against the State department of public instruction, the State board of education, and the State superintendent; and Burlington, on an affidavit from Mr. Pottinger, was listed as a dual school system.

We tried to settle out of court in line with a plan developed by the Justice Department and HEW people, through what they termed an ad hoc committee in Atlanta. This was their own mechanism for devising a plan.

We accepted the plan of the ad hoc committee, and then the HEW Office for Civil Rights refused to accept it, and rescinded the authority which they had delegated to this ad hoc committee, and refused to accept it, after we had agreed to it.

Now, we have just closed a predominantly white school, consolidated it into a formerly black school, for the purpose of trying to avoid disruption during the school year.

It appears that we may yet be in the Federal court on this proposition.

And the one thing I would say here in these last few minutes is that if racial balance in pupil assignments becomes the policy of this Nation, and we certainly ought to have a national policy, because we are operating now under a conspicuously dual policy, under this de jure-de facto theory, and that doctrine is a coverup for a conspiculously dual policy in this country, it will surely be because persons at the highest level have not really looked at this question of racial balance with the long-range good of education in mind, but have considered it only in terms of current ideology or political expediency.

As the distinguished columnist for the Washington Post, Joseph Kraft, stated in his article of Sunday, March 1, 1970, "It is not beyond the wit of man to frame a national school policy which meets virtually all cases."

We believe that the bill introduced in the House of Representatives by Congressman Preyer and in the Senate by Senator Spong, accomplishes this purpose in a substantial way.

Senator Pell. Thank you.

(The prepared statement of Mr. Profitt follows:)

Statement Before the Education Sub-Committee
of the U. S. Senate
on August 27, 1970

By: Brank Proffitt, Superintendent
Burlington City Schools
Burlington, North Carolina

It is not my purpose here today, either as a concerned citizen or as a practicing school administrator, to advocate turning back the clock in the field of school desegregation. I do not pretend that it is sufficient merely to wipe off the books the statutes which created de jure segregation, where it has existed, and then continue to operate schools the same way as before. I do not believe that the adoption of a freedom of choice assignment policy, while the school system continues to operate largely as it has before, meets the constitutional and statutory requirements to desegregate. In other words, I do not come here today in defense of tokenism. The following case history is presented to show the urgent need for a coherent national policy to overcome the ambiguities and obfuscation which now are the norm in the area of school desegregation when dealing with Federal agencies.

During a seven-year period, since I came to Burlington as superintendent, we have moved from a segregated operation to a unitary school system based on honest geographic attendance areas. We have racial balance in faculty assignments in all schools and in student assignments at the junior and senior high school levels. Elementary pupils are assigned to the school serving the attendance area in which they reside. The HEW Office for Civil Rights still questions, after two years of negotiations and numerous concessions on our part, the so-called racial identifiability of one elementary school(out of ten) in our district, but a hearing examiner, on March 16, 1970, found us to be in compliance with the requirements of the Civil Rights Act of 1964 and its implementing regulations. Since that time we have moved to close one predominantly black school, and have made boundary changes in zone lines to get more black pupils in neighboring schools. But we still cannot settle with HEW.

The HEW Office for Civil Rights appealed the hearing examiner's ruling to the Reviewing Authority, even though the ruling seemed to be unusually well-reasoned and the hearing examiner was reputed to be one of the most respected and experienced in civil rights cases. We found this to be somewhat difficult to understand and made some inquiries into the process of administrative proceedings open to school systems which fail to receive the blessing of the HEW Office for Civil Rights. We learned that the policy of the Office for Civil Rights was to appeal routinely all unfavorable rulings of hearing examiners in school cases, without regard to the facts and the merits of the rulings.

We sought information from the record concerning the handling of school cases which had been appealed to the Reviewing Authority, since the findings of facts by the hearing examiner seemed to count for so little with the HEW Office for Civil Rights. We learned, with some difficulty in trying to get the information, that at the time our case was appealed the Reviewing Authority had decided 61 out of 61 such administrative appeals in favor of the government and against the school districts. We understandably felt some concern about due process in the face of this record. We understand now that the Reviewing Authority has decided two cases in favor of school districts since the time of our first inquiry.

Following the appeal of our case to the Reviewing Authority by the HEW Office for Civil Rights, the school board chairman, our attorney, and I went to Raleigh, North Carolina on May 28, 1970 to a conference jointly initiated by the Justice Department and HEW. Two teams of Federal officials met at scheduled times throughout the day with officials from school districts not yet approved by the HEW Office for Civil Rights. One of these teams was headed by Mr. Stanley Pottinger, Director of the HEW Office for Civil Rights, and the other was headed by Assistant Attorney General Jerris Leonard, chief of the Civil Rights Division in the Department of Justice. We met with Mr. Leonard's group, explained our plan of desegregation in detail, called attention to the hearing examiner's finding of fact in our case, and further called attention to the HEW-OCR appeal to the Reviewing Authority. During this conference, Mr. Robert C. Mardian, General Counsel for HEW and the Executive Director of the Vice-President's Committee on Desegregation, a member of our conference team, confirmed in the meeting our information concerning the HEW-OCR policy to appeal all unfavorable decisions from hearing examiners, regardless of the merits of the individual cases. He also confirmed our information concerning the record of the Reviewing Authority in school cases. Mr. Leonard told us, at the conclusion of the conference, that we would be officially notified of the team's decision concerning Burlington "within a week or ten days."

The following day we were told by a member of the North Carolina Department of Public Instruction who sat in on the conference that Mr. Leonard told him in a post-conference conversation that he agreed "with everything Burlington said." This seemed to be confirmed on or about July 2, 1970 by news stories out of Cincinnati where Mr. Leon Panetta, former Director of the HEW Office for Civil Rights, stated in a speech to a national convention of the NAACP that Mr. Leonard sent a memorandum to Mr. Pottinger in which he recommended that Burlington's plan should be approved as presented in Raleigh on May 28. Shortly before this news item was published, however, after much effort on our part to find out what did come out of the May 28 conference, I had finally received a telephone call from Dr. Lloyd Henderson, Education Branch Chief in the HEW Office for Civil Rights. Dr. Henderson began the conversation by stating that he had Mr. A. J. Howell, the OCR desk chief for North Carolina on the line with him(Mr. Howell did not say anything) and then informed me that Burlington was still considered to be in non-compliance.

In follow-up conversations with Federal officials, we made an extended effort to find out in what way our school operation violated the President's desegregation statement of March 24, 1970(since we had been told by Mr. Leonard that this statement constituted the new guidelines). At least one official in both the Justice Department and HEW referred to the President's statement as "politics." We had felt originally that the statement was a highest-level, sound, and sensible exposition on a matter of great national importance. The government's own people have about convinced us otherwise by now.

On June 30,1970 attorneys for the NAACP filed a civil action in the United States District Court for the Eastern District of North Carolina, alleging a duty on the part of the State Board of Education and the State Superintendent of Public Instruction to take affirmative action to eliminate dual school systems in the state; also alleging that the Burlington City Schools, along with 19 other local school systems(being the systems considered out of compliance by OCR of HEW at the time of the preparation of the NAACP complaint) remained segregated and asking that the State be restrained from granting state funds to Burlington and the other named school systems on account of an alleged dual school system. On July 24, 1970, the United States Justice Department filed with the Court a complaint in intervention, along with an application for an order for "immediate relief."

On July 24, 1970, Judge Algernon Butler, Chief Judge in the District, issued an order directing the North Carolina State Board of Education and the State Superintendent of Public Instruction to instruct Burlington and the other named school systems to collaborate in the preparation of plans for immediate conversion to a unitary school system, utilizing the assistance of the United States Office of Education and attempting to reach agreement, as to a plan, with the United States by August 4, 1970; to report to the court such agreement or, in the absence of an agreement, a suggested plan for operation of a unitary school district. The Attorney General of North Carolina, as attorney for the state officials named as defendants in this action, appealed the order and moved for a stay before United States Circuit Judge J. Braxton Craven on July 30, 1970. A stay was granted by Judge Craven on July 31, 1970 pending appeal of the order.

Despite the issuance of the stay by Judge Craven and the lack of formal instructions from the State officials pending a hearing on the stay, the administrative staff of the Burlington school system actively collaborated with an official from the Office of the North Carolina Superintendent of Public Instruction, and a second official from the regional HEW office in Atlanta, both acting under HEW Title IV authority, who visited the Burlington school system Wednesday and Thursday, July 29 and 30, for the purpose of acquiring information as to Burlington's plan of desegregation and exploring the possibility of changes to bring the school system into compliance with HEW requirements.

On Friday, July 31, 1970, a meeting of Federal officials was held in Atlanta, Georgia under the auspices of, and attended by officials from, the HEW Office of Education(Title IV), the HEW Office for Civil Rights(Title VI), the HEW Office of General Counsel, and the Education Section, Civil Rights Division, U. S. Department of Justice--these officials being termed an "ad hoc" committee. This committee had been delegated the responsibility of considering the report of Title IV officials visiting local school districts during the preceding two-day period and, based upon information so acquired, agreeing upon a plan of desegregation for each local school district, which would be the plan of the United States to be filed with the Court by the Department of Justice, such to be with the full concurrence of the Office of Education and the HEW Office for Civil Rights.

For the purpose of trying to settle our differences with HEW-OCR so as to avoid disruption during the 1970-71 school year, and not because of any present noncompliance with the law, our Board indicated to Title IV officials that it would consider any educationally sound and reasonable plan, designed to change further the racial ratio of elementary pupils assigned to Sellars-Gunn school, if such plan could become a full and complete settlement of all matters at issue with the United States in the above mentioned legal action and with HEW-OCR in the administrative proceeding.

My office was informed of the opinions of the Federal ad hoc committee meeting in Atlanta on July 31, 1970, with reference to its plan of desegregation, by a long distance telephone call from two officials, both members of the ad hoc committee, and we suggested a modification in the plan being considered for Burlington by the committee, which modification was accepted by the ad hoc committee and made a part of its report adopted in Atlanta on July 31, 1970. We understood the ad hoc committee plan fully, going over it in meticulous detail on the telephone with the two representatives who had visited for two days in the school system.

On Saturday morning, August 1, 1970, the Burlington Board met in special session for the purpose of considering the plan of the ad hoc committee as to pupil assignment for the 1970-71 school year. Solely for the purpose of settlement and conditioned upon settlement of all matters at issue with the Justice Department and the Department of Health, Education and Welfare, both judicially and administratively, the Board accepted the report of the Atlanta Federal ad hoc committee as had been adopted by Federal officials the preceding day.

For the purpose of procuring documentation of Justice Department and HEW concurrence in the action of the Board accepting the Atlanta ad hoc plan, our attorney and I came to Washington, D. C. on Monday, August 3. We met staff attorneys of the Education Section, Civil Rights Division, Department of Justice, who verified that the action of this Board on August 1 was in full accord with the Atlanta ad hoc committee action on July 31 and assured us of acceptance by the Justice Department. On the basis of this assurance, I returned to Burlington that night.

Our attorney conferred with the Director of the HEW Office for Civil Rights the next day, Tuesday, August 4, in Washington, D. C., for the purpose of obtaining his assurance that the HEW administrative proceeding would be discontinued as a result of Burlington's acceptance of the Atlanta ad hoc plan. The Director referred the matter to the North Carolina Desk Chief of the Education Section for the HEW Office for Civil Rights, who verified with a telephone call to Federal officials in Atlanta on Tuesday afternoon, August 4, that the action of the school board on August 1 was in accordance with the ad hoc committee action of July 31, confirming this to our attorney.

Thereafter, on that same afternoon, the Chief of the OCR Education Section and his North Carolina Desk Chief, together with a representative of the HEW Office of General Counsel, conferred with HEW Office of Education officials while our attorney waited, and late Tuesday afternoon, August 4, advised our attorney that the Burlington City Board of Education had not correctly understood the action of the Atlanta ad hoc committee on July 31, and that the Burlington school board's acceptance of the plan on August 1, 1970 would not suffice to put the school district in compliance with the law.

Our attorney was thereupon informed by Department of Justice attorneys that they would abide by HEW-OCR determination as to what constituted the report of the Atlanta ad hoc committee, although they had verified the day before that our understanding of the ad hoc committee's plan was correct. They also informed our attorney that the Justice Department would file with the court that plan deemed acceptable by the HEW Office for Civil Rights as conceived for the first time on Tuesday afternoon, August 4, 1970, after our attorney attempted to accept the plan adopted by the Atlanta ad hoc committee on July 31, 1970.

On Wednesday, August 5, 1970, an HEW courier from Atlanta brought to the office of the Clerk of the United States District Court in Raleigh and filed therewith a document entitled "A Desegregation Plan for the Burlington School District, Burlington, North Carolina, by the Division of Equal Educational Opportunities, United States Office of Education, Atlanta, Georgia," this document having attached to it a map of the Burlington School District with elementary and secondary school zone lines shown on the map. Our attorney obtained from the Office of the Clerk a copy of this Office of Education plan on Thursday, August 6, 1970, but this copy did not include a zone map. On August 7, I received in the mail, from the HEW Office in Atlanta, the plan filed with the court, again without a map, and wrote to this office on August 7, 1970, calling attention to this omission and requesting a map. However, as of this date, no map has been provided, although the opening of school was scheduled for yesterday.

The map filed with the Court in Raleigh and forwarded to the senior judge in Clinton, North Carolina, clearly indicates on its face that certain elementary school zone lines were radically changed from those originally drawn, the lines obliterated with a chalk-like substance being those which were a part of the Friday, July 31 ad hoc report. These obliterated lines are consistent with the narrative of the government plan filed with the court on August 5.

The plan of the Office of Education, as filed with the court, is completely ambiguous and inconsistent throughout. It is clear that the narrative of the plan filed with the court is in accordance with the Friday, July 31, Atlanta decision. The map attached to the plan, with the crudely drawn changes on it, portrays the effort to incorporate the changes decreed for the first time by HEW-OCR in Washington on Tuesday afternoon, August 4. The statistics used in the plan came from some source unknown to us and do not agree with either the narrative or the map. In the meantime, we checked with a Title IV representative in both Raleigh and Atlanta and had it confirmed that our original understanding of the ad hoc committee plan was indeed correct and that the changes were dictated from Washington after our attorney approached HEW-OCR officials for a settlement on Tuesday afternoon, August 4.

We are unable to evaluate the government plan of desegregation filed with the Court, since it is, in its present form, completely meaningless. It clearly represents an effort on the part of HEW-OCR officials to rescind authority delegated to the Atlanta ad hoc committee, with changes being so hastily and abortively made that the plan furnishes no basis for intelligent consideration of our situation.

We have made every conceivable effort to settle the HEW administrative proceeding prior to the opening of school and to reach an out-of-court settlement with the Department of Justice. Such efforts have been unavailing and decisions relating to the assignment of pupils could not be further postponed in the vain hope that these agencies will change their mode of dealing with us as outlined already in this presentation.

After ascertaining that a settlement with HEW-OCR officials was not possible, in order to try to avoid disruption of the school system after schools open, the Burlington Board of Education voted unanimously to close a predominantly white school and make modifications in geographic zone lines in an effort to remove further the racial identifiability of our one remaining majority black school. These changes were designed to achieve substantially the same results as the original plan of the Atlanta ad hoc committee. The Board has strengthened its majority to minority transfer policy by authorizing such transfers on a "guaranteed space" basis and with assured transportation when pupils qualify under a uniform distance requirement. The Board feels that it has gone as far as it can now go without uselessly disrupting the operation of the school system, agreeing to administrative patterns that no sensible person would ever devise for effective operation of a school system, and seriously undermining support for public education in the Burlington community. In comparison with our resources, we have had a good school system in Burlington, respected throughout the state, and serving all pupils without discrimination. We are understandably reluctant to make changes which are not taken to improve and strengthen our school system but are taken to serve an ideological reach for racial balance in pupil assignments at any cost.

While the President's statement of March 24, 1970 disclaims the move to racial balance as an objective, administrative officials in the government seem to be moving relentlessly in this direction. It appears to us that decisions on specific school cases are not made by persons in the main decision-making jobs but, in our case at least, by a subordinate who seems to have the right political connections. The people in the larger jobs are affable persons, often sympathetic with our problems, but unwilling or unable to make a clean decision on the merits of our case.

If racial balance in pupil assignment becomes the policy of this nation in regard to public education, it will surely be because persons at the highest level have not really looked at this question with the long-range good of education in mind but have considered it only in terms of current ideology or political expediency. Such a policy will exacerbate racial disharmony and will create, for urban communities especially, a continuing source of disruption, dislocations, instability, and severe loss of public confidence in public education. We are already seeing the effects of this in failure of school tax and bond elections and in the flight of white pupils. Racial balance in pupil assignments cannot be imposed on the Southeastern region without ultimately being imposed on the whole nation. No fairminded person could hold out indefinitely for such an arrangement. A conspicuously dual standard is now being imposed under the cover-up of the de facto - de jure doctrine, but this theory is already being distorted out of shape in North Carolina. Whatever protection is afforded to school pupils by the Constitution and national laws is afforded to all pupils alike, North and South.

Let me say here, as earnestly as I can, that my interest in this matter is not only that of a school superintendent from North Carolina but as an American who thinks public education is vital in the lives of our people. In that frame of reference, I do not believe that racial balance in pupil assignments, in a literal, arithmetic sense, either will or can be brought about in the urban school districts of this country without turning the coercive power of the Federal government into a repressive force characteristic of a police state and destructive of our form of government. If this is undertaken nationally, desegregation will be a massive failure, untold damage will be done to public education, and the kind of hard-core segregation which is now in many of our central cities will be accelerated rather than contained or decreased.

It is my opinion that the courts, divided and harassed as they are now, would welcome, as a proper exercise of its Constitutional powers, a law from

Congress which would spell out a coherent national policy on school desegregation. Such a policy should be fair to minority interest but, at the same time, should responsibly take into account what can reasonably be done -- or, stated another way, what can be done with lasting, beneficial results. Such a policy should be understandable to reasonable men and women and amenable to consistent interpretation by administrative officials and the courts. It should be clear enough in its provisions and intent that it will have the same fundamental effect and purpose wherever it is applied.

As the distinguished columnist for The Washington Post, Joseph Kraft, stated in his article of Sunday, March 1, 1970, "...it is not beyond the wit of man to frame a national school policy which meets virtually all cases." We believe that the bill introduced in the House of Representatives by Congressman Preyer and in the Senate by Senator Spong accomplishes this purpose in a substantial way.

BRANK PROFFITT

Education

Mars Hill High School, Mars Hill, North Carolina

Mars Hill College, Mars Hill, North Carolina

Western Carolina College, Cullowhee, North Carolina, Bachelor of Science, 1942

George Peabody College for Teachers, Nashville, Tennessee, Master of Arts, 1949

University of North Carolina, Chapel Hill, North Carolina, Doctor of Philosophy, 1957

Summer credit from Colorado State University and from Teachers College, Columbia University

Experience in Education

Superintendent of city schools, Burlington, North Carolina, 1963--

Director, North Carolina Teacher Merit Pay Study, State Department of Public Instruction, Raleigh, North Carolina, 1961 - 1963

Western Carolina College, Cullowhee, North Carolina, 1957 - 1961
- Principal of McKee Laboratory School
- Associate professor of education
- Member of the Policies Committee of the college

Superintendent of city schools, Tryon, North Carolina, 1951 - 1956

Teacher of social science and assistant principal, Sylva High School, Sylva, North Carolina, 1949 - 1951

Professional Memberships

National Education Association

American Association of School Administrators

North Carolina Education Association

Division of Superintendents of the NCEA and President, North Central District

Associate Member, Division of Principals of the NCEA

Beta Theta Chapter, Phi Delta Kappa

National Organization on Legal Problems of Education

Professional Activities

Member of the Board of Directors and the Executive Committee, Learning Institute of North Carolina

Member of the North Carolina Advisory Council on Teacher Education

Chairman of the Executive Committee, Piedmont Association for School Studies and Services

Attended by invitation the three-weeks Superintendent's Work Conference, Teachers College, Columbia University, Summer, 1965

Participated in a scheduled Administrators' Clinic, University of Wisconsin at Milwaukee, as a visiting lecturer on evaluation of teacher effectiveness, January 31, 1966

Participated in the AASA National Academy for School Executives seminar on Dissent and Disruption in Educational Operations, Incline Village, Nevada, Summer, 1969

Selected by the International Exchange and Training Branch of the United States Office of Education as one of thirty-eight school administrators from the United States to participate in a Seminar for School Administrators held in New Delhi, India, February 12 - March 22, 1968

Served during past years as educational consultant on several occasions, member and committee chairman for evaluation teams concerned with state and regional accreditation of schools, local NCEA president, chairman of various state and local committees, panels, and discussion groups, and in many community and church leadership roles

Recipient of the 1970 Western Carolina University Distinguished Alumni Service Award

Local Civic Activities

Past President, Community Council of Alamance County

Former Director, Burlington Rotary Club

Former Campaign General and present President of the Board of Directors, Alamance County United Fund

Deacon, Sunday School Teacher, and Chairman, Pulpit Committee, First Baptist Church of Burlington

Member of Board of Directors, Alamance Community Action Program, Inc.

Member, Alamance County Mental Health Advisory Committee

Member, Education Committee, Burlington-Alamance County Chamber of Commerce

Senator **Pell**. I understand Senator Eagleton has been very gracious, and said that while he will be gone from 12 to 1, he will be willing to come back at 1:05. So the witnesses not heard will have an opportunity at that time, though the pressure is a bit on Senator Eagleton. Senator Eagleton has been very kind, and Senator Spong had requested this be done.

Now, do you want to give your statement? I think it would be best for each of you to give your statements, and then we will ask questions.

Mr. **Thomas**. I am Vincent Thomas, chairman of the Norfolk, Va., School Board.

Our experience has been in the courts, rather than with HEW, primarily, in the matter of school desegregation. Our case is one of some notoriety. We have been in court since 1957, and my statement describes our district makeup of pupils and faculty, somewhat of the demography of the district, and goes a little into the background of our court case.

I think the significant thing is that early in 1969 we conscientiously tried to draft a long-range plan of desegregation which would lead to a unitary school system.

This was argued in court for 10 days, and there was a very fine opinion written by the district court in approval of the plan, and it was, however, reversed by the Fourth Circuit Court of Appeals, without amplification or without giving us the reasons for reversal, and merely indicating that the law of the land was that regardless of what educational plans were proposed, that they must stand the test of the numbers game.

We had to go back in the court. We have had a great deal of turmoil, like many other school systems have. We had to reassign yesterday 230 teachers to new schools, with the school opening on September 4.

I think any Southern school system can testify to the great disruption administratively they have gone through this year.

If this court ordered plan can be implemented successfully this fall, Norfolk will have the following percentages of total number of black students in integrated schools, and these are schools defined as over 10 percent black, and elementary schools are 41 percent, and junior high schools are 80 percent, and senior high schools are 100 percent, and systemwide, 60 percent of our black students are in integrated schools.

You might be interested in comparing these statistics with similar statistics from urban school systems in your own individual States.

The administrative difficulties in implementing these widespread changes in such a limited time are staggering, and our citizens are understandably up in arms. Eight civic leagues have voted to boycott the schools, local private schools are deluged with applications, and residential real estate activity in the affected areas is high.

Our students, in whose name all this is being done, are bewildered and angry. Public confidence in our school system is slipping.

I relate these problems to you because they are similar in greater or less degree to those being experienced at this very time by other urban school systems throughout the South.

With almost reckless abandon, the Federal courts are making educational judgments, without considering the long-range educational consequences of these judgments.

To illustrate the increasing involvement and interference of the judiciary in the management and policymaking of public school systems, the courts have considered and/or rendered judgments in the *Norfolk* case in the following areas of school policy normally thought to be the prerogative of the school board: pupil assignment; teacher hiring, assignment, promotion, and transfer; administrative assignment; course and program offerings; school finances; school transportation methods and schedules; school opening times; building renovation and construction; site location; grade organization; school board policymaking procedures. Continued litigation under the current legal uncertainties can only mean deeper court involvement in school policymaking and management, areas in which the competence of the judiciary is certainly subject to challenge.

Senator **Pell**. Excuse me. We must recess, this is very rude and frustrating to you witnesses, I can assure you it is even more frustrating to Senators who are supposed to be at other committee meetings while at the same time the Senate is meeting on the floor.

Thanks to Senator Eagleton, the meeting will reconvene at 1:05, but the meeting is recessed now.

(Whereupon, at 12 o'clock noon, the subcommittee recessed, to reconvene at 1:05 p.m., the same day.)

AFTERNOON SESSION

Senator **Eagleton** (presiding pro tempore). The Subcommittee on Education of the Committee on Labor and Public Welfare will once again be in session to continue consideration of S. 4167.

We recessed as was known prior to the noon hour, and the pressure of time is not as urgently upon us as it was before. Mr. Thomas, you were making your presentation, and we don't want to cut you short, so please continue at a more normal and comfortable pace, without feeling you have to race through it.

Mr. **Thomas**. Well, I was hurrying along, and the reporter complained a little about my speed, so I will revert to my natural southern drawl.

In my statement, and I won't go back and read it, I just merely gave some of the statistical information about our school system, a little about our history of our Federal court litigation, in which we feel that we have tried very hard to solve the problem in an educationally sound manner and a legally defensible manner and in a manner which all of our citizens, black and white, or at least the majority of them, will accept.

I think possibly we are at a point where we can work these things out with our local people, but we have gone so far now, and the outside influences, through the Justice Department and NAACP, have so complicated the situation that we really don't seem to be engaged in an attempt to find out what to do about our school system, but we are engaged in just a lawsuit in which each side is trying to win it.

We received our last court order on August 14 to implement on school opening, on September 4, and we have run into dreadful administrative difficulties doing that.

Yesterday, having reassigned 500 teachers across racial lines in June to effect the first step of a racial balance by 1971–72 school year, we were forced yesterday to reassign 230 more, this close to the opening of school.

Our long-range plan was reversed by the appellate court, and they rejected it out of hand, without amplification or explanation of substantial educational and legal questions raised by our plan, and by the district court's lengthy decision. His decision was really ignored by the appellate court.

To replace the school board's rejected principles and guidelines for the future, the court offered only the dictum that an unspecified amount of additional mixing was required, regardless of other considerations.

The court berated the board for failing to achieve a unitary school system, without bothering to tell it just what a unitary school system is, or how it must be achieved.

Now, to accomplish this new plan, or to accomplish movement of the children required, which we were busing about 8,000 children, and now have to bus about twice that many, the capacity of the transit system will be strained to the limit, and school openings will have to be staggered from 7:40 to 9:30 a.m., a period of 1¾ hours.

Now, I talked about what percentages we will ultimately attain, if the plan is successful this year: Elementary schools, 41 percent of the total black students will be in an integrated situation, and 80 percent junior high level, and 100 percent at the senior high level, and that is 60 percent systemwide.

Is it any wonder that Southern school boards feel that they are losing control of their systems to the courts? Is there any doubt that we desperately need to know what a unitary school system is, so that by achieving it we may regain control of our systems and return to the task of educating our children, of whatever color?

If the troubles we are currently experiencing would produce the final legal sanction we all seek, we could somehow accommodate the burden. But no. In our case, the NAACP has already appealed because we have not enough bussing to produce racial balance in all schools, and a group of citizen-intervenors have appealed because we have too much bussing.

Who can tell us whether or not we are now a unitary system? Unless we receive prompt relief from Congress or the Supreme Court, or both, we can only look forward to continued litigation and attendant disruption of our school system and in our community.

In view of the many conflicting decisions rendered by the lower courts, we are quite apprehensive that the Supreme Court may be tempted to clear the confusion by defining a unitary school system as one which has a proportionate racial balance of all faculty and all students in all schools. No long and complicated definition needed here—just a simple, easily understood, statement on the order of "one man, one vote."

Although forced racial balancing might work in some systems having favorable geographic and demographic conditions, in others it would be an educational and political disaster.

The approach of the legislation under consideration is far preferable as national policy, and it is imperative that Congress, the elected representatives of the people, and not the courts, determine the national policy on school desegregation affecting this vital public institution so close to the people.

Regardless of who actually makes public school policy—and all segments of government have an input—it is ultimately and finally the responsibility of local school boards and school administrations to implement these policies and make them work.

We simply cannot operate effectively in the area of school desegregation without better guidelines. We need definitions. We need direction. This bill provides them.

Now, just what are the elements of a unitary school system? I offer these for your consideration:

1. Absolute and immediate elimination of all invidious discrimination based on race. This is the "negative mandate" laid down by the *Brown* decision in 1954.

2. Good faith implementation of the "positive mandate" of the courts and the Civil Rights Act of 1964, which requires that school boards take affirmative action to eliminate the detrimental effects of past segregation and discrimination, and I add to the extent of their ability reasonably to do so.

This "mandate" includes those areas of school board discretion such as faculty integration, and here is an area over which we have complete control, faculties are artificially separated, and we can bring them back together artificially, the way ordinary chance would have had it, school site location, rezoning to maximize integration, and do away with gerrymandering or lines gerrymandered to perpetuate segregation, construction of new facilities, and others where the school board has the clear and publicly recognized authority to act.

3. A "majority to minority" transfer plan to both maximize integration and meet the legal requirement that no child be denied access to a desegregated education because of his race. Transfer under this type of provision should be actively encouraged by the school board.

4. Continuing good-faith actions by the school board, administration, and staff in all matters involving race.

The above elements of a unitary school system are provided in this legislation, but are the easy ones on which most of us can readily agree. Having achieved them, most urban systems are left with only de facto segregation based on housing patterns, and this is mostly at the elementary school level, because it is simply easier to achieve integration at the secondary level.

It is, however, in the area of pupil assignment where agreement and consensus break down, for here we face honest, but emotional, differences over the preservation of neighborhood schools versus use of forced busing to eliminate racial isolation due to housing segregation.

In our system, if racial isolation must by law be completely and promptly eliminated, it can only be done by massive cross busing and the abandonment of the neighborhood school concept.

All assignment devices designed to promote integration—educational parks, pairing, grouping, rezoning—ultimately lead to the use of busing and the breakup of neighborhood schools. The difficulties involved are in direct proportion to the percentage of minority students in the system.

Senator Javits calls "busing" a "red herring," and to some degree he is right. Judge Sobeloff, of the fourth circuit court of appeals, calls the neighborhood school concept a "shibboleth," and to some degree he is also right.

For whatever reasons, however, "busing" is anathema, and the "neighborhood school" is sacred to most American parents, and much education and leadership will be required to make them think otherwise.

To maintain public support for public education while implementing and maintaining a successful system of integration and successful integration, as I indicate, is integration that can be achieved and maintained with public support, school boards, acting in good faith, must be allowed to assign their pupils either on a single zone, area attendance plan, with lines honestly drawn, or on some plan of racial balance, whichever is most applicable to their particular community, and more important, whichever will lead to the achievement and maintenance of an equal educational opportunity of highest quality for every child.

This legislation provides for sensible, educationally sound pupil assignment within the unitary school system.

Norfolk is not trying to avoid integration. We have made substantial progress, and are proud of it. We are, however, trying to avoid disintegration of our school system because of unwise policies thrust upon us by outside agencies. We want to be a unitary school system which serves every child equally.

Please help us by your favorable consideration of this proposed legislation.

Thank you.

Senator EAGLETON. Mr. Thomas, you gave us some figures, and I was trying to find it in the text of your statement, but I don't know that I got it as you stated, or I heard it.

You mentioned somewhere about you had been busing 8,000 students.

Mr. THOMAS. Yes, it was not in the text. There are 8,000 students in our system who require transportation to school. We have a public transportation system, the students using it at their own expense, and it has been a policy through the years because of this to minimize the amount of transportation required. But we have a minor amount of transportation required now at the elementary level, and progressively greater at the secondary level, which serves larger areas or larger attendant areas than at the elementary level.

Senator EAGLETON. What I have not gotten straight is this: were you busing the 8,000 students by school district-owned and operated buses?

Mr. THOMAS. No, these are those who used the public transit system. These are the number of children using the public transit system.

We run special buses, the public transit system, rather, runs special routes for the schools, to and from schools.

Senator EAGLETON. I see. But it is a chartered bus, as it were?

Mr. THOMAS. No, it is not chartered.

Senator EAGLETON. You mean adults ride it on the way to work, too, or is it just for schoolchildren?

Mr. THOMAS. Well, some of them I guess you will call it chartered, although each student gives a ticket, they ride it half fare, and we have certain school routes run for schoolchildren in the morning.

Senator EAGLETON. And just children are on it going to school?

Mr. THOMAS. Yes.

Senator EAGLETON. And 8,000 students last year were using this means of transportation?

Mr. THOMAS. Yes.

Senator EAGLETON. To go from their home on a public bus with a half-fare ticket to their school, wherever it was?

Mr. THOMAS. Right.

Senator EAGLETON. Now, that figure will be what?

Mr. THOMAS. 16,000.

Senator EAGLETON. Now, this half-fare ticket, does the school district in some way subsidize it for the district?

Mr. THOMAS. No, although one of our State legislators has in the last three sessions, offered legislation for some relief from the State, and this has so far not been forthcoming.

In other words, in order to obtain State aid, we must have yellow schoolbuses operated by the school system.

Senator EAGLETON. Now, these 8,000 that were using public transportation buses to get to school, you say that has gotten progressively higher as you went to the secondary level?

Mr. THOMAS. About double.

Senator EAGLETON. Because there are fewer high schools than grade schools?

Mr. THOMAS. No; the children have to move longer distances to go to high school.

Senator EAGLETON. To go to high school; correct.

Do you know the figures showing how many of that 8,000 were grade school children? Or do you have a junior high school system in Norfolk?

Mr. THOMAS. We have a junior high system.

Senator EAGLETON. Now, let's just take kindergarten through what, seventh grade?

Mr. THOMAS. I don't have that. We were running about 30 trips in the morning and 30 trips times 50 is 1,500 students in elementary.

Senator EAGLETON. Now, were these children at the elementary level, were they being bused to the nearest school adjacent to their home, or were they being bused beyond the nearest school in some instances?

Mr. THOMAS. Not necessarily. Norfolk is a seaport town, and you have all kinds of water running all through the city, and other natural barriers. All of our elementary schools——

Well, I have to go back. We were actually last year operating on a modified freedom of choice, but all of this has been changed through the court action.

We want to have at the elementary level an area attendance, single zone area attendance plan, and we don't even call it a neighborhood plan because we actually break up some neighborhoods, and here we get into semantics, but the lines were drawn so as to fill the school comfortably and achieve as much natural integration as we can in the school district, that is educationally sound, and that we can handle.

Senator EAGLETON. On your system last year, how many elementary schools did you have in your Norfolk district?

Mr. THOMAS. Fifty-six.

Senator EAGLETON. Of those 56 last year, how many, if you know, were 90 percent or more black?

If that is not a convenient cutoff point for you, whatever your figures will reflect.

Mr. THOMAS. Well, last year—I could probably find it somewhere, but I think we might just rather go on and come back to it.

Senator EAGLETON. All right. Overall, in the total Norfolk school system, what is the black and white percentage?

Mr. THOMAS. That is on page ——

Senator EAGLETON. Is it page 4?

Mr. THOMAS. No, at the bottom of page 1, and 44 percent is at the elementary level, and 42 percent at junior high, and 36 percent at the senior high level.

Senator EAGLETON. Would you have a rough approximation as to how many schools were substantially black of the 56 elementary? By substantially, I mean 90 percent or better?

Mr. THOMAS. I don't know the number. About 14 percent of the black students last year were in integrated situations, 14 percent of the black elementary schools, that is.

Senator EAGLETON. All right. Fourteen percent of black elementary students were in integrated situations, and therefore 86 percent were in more or less overwhelmingly black situations or nonintegrated.

Did you have instances under last year's plan or method wherein if a student was a black student and got on a public bus with his half-fare ticket, he went to a school and bypassed a school where there is a substantial number of white students?

Mr. THOMAS. No, sir. I don't think so.

In other words, you are saying, "Are our elementary lines gerrymandered to find a gerrymandered situation?"

Senator EAGLETON. Yes, I am asking that.

Mr. THOMAS. We might argue about that. We have tried very hard not to have that happen. When you get down into the concentrated downtown neighborhoods, where the schools serve such relatively small areas, you are getting into a problem in separating the zones on some sort of a basis, but our plans, and whta we are certainly willing to do, is to gerrymander these lines, and that is what our plans called for, to actually gerrymander the lines in a way to achieve more integration, rather than gerrymandering them the other way.

Nobody accuses us of gerrymandering the elementary lines.

Senator EAGLETON. Senator Spong.

Senator SPONG. First, Mr. Thomas, I would say that both you and Mr. Profitt, by your testimony, have given the subcommittee a description of the confusion that presently exists as a result of conflicting court decision and administrative orders.

This morning, Senator Pell asked me to comment upon the NAACP legal defense memorandum by Mr. Greenberg, and I answered three specific criticisms.

I would like to make note of the fact that the criticism failed to take account of the demographic trends and the consequences of those trends which I do not believe can be overlooked. In all areas of our Nation, we have inner or center cities, which are increasingly black, and growing suburban areas which are predominantly white.

Recent school desegregation experiments have undoubtedly contributed to these trends, although other factors are also involved.

Now, Senator Ribicoff wrote an article in Look magazine which appeared just a few weeks or a few days ago, and I am reciting this as a preface to a question in my mind. He said:

> In time, the South can argue that it has ended de jure segregation and replaced it with a de facto kind. As proof, the South will soon be able to say its cities and suburbs are just like the North's, black cities and white suburbs. Then what will tolerance of the fact of desegregation achieve?

Now, in you remarks before we recessed, you made some mention of some of the trends in Norfolk. In my remarks, and also Congressman Preyer's, we talked about resegregation. Would you care to comment upon these trends or make any projections on the situation in Norfolk with regard to resegregation?

Mr. Thomas. Well, I think it is worthy of noting that we have had a number of elementary schools that have gone from all white, have integrated back to all black, and we are at present in our integration plan now involved in the desegregation of elementary schools which have resegregated. We had one elementary school that went from about 500 white students to 1,100 black students in about a 3- or 4-year period, as the neighborhood turned over, so to speak. So I think this resegregation really was due to the neighborhood turnover. That neighborhood was also mostly white at the time, and is now an all-black neighborhood, and now we are required, and we should try to break up that resegregated school again, but this maybe will turn out to be somewhat in a cycle.

Now, we are involved in a new white area which has not been as heavily involved before in the plan we have coming up for this year, and there is a great deal of citizen activity in that area. People are putting up their homes for sale, and they are moving within the city, and I think there are all sorts of strategems that are being planned, to move over with "my grandmother," or some such, and all of these things will be ferreted out because everybody is going to make sure that people living next to them have to do exactly what they do.

But a great deal of how the instability has been caused in these areas that have been assigned to balance your white areas, although most are integrated to some degree as far as housing goes, they do adjoin the downtown core city area, and the people feel very unstable in their housing situations now.

We will also suffer, I think, and it is kind of hard to move now, because of the money situation, and it is hard to sell your home, and hard to buy a new one, but I think where it is going to hurt us most is on attrition, because we have a great deal of turnover in our area, because of the large Federal installations.

Now, a commander from Rhode Island who is coming into a station in our area comes in, and he looks for a home, and one of the things he asks is, "Where will my children go to school?"

Under our present situation, we have to say, "He will go here this year, but we don't know where he is going to go next year," or, "We don't know how long he will go to this school, because we are splitting them up in groups of one to four or one to three and three to six, and we don't know where he will go to junior high school because it is in flux. We can pretty well tell you later where he will go to senior high school."

As a parent, I don't know that I would move in a community that had that to say about its school system. So until we get some stability in our school system, we are going to have a corresponding instability in our housing situation.

We are worried about the attrition and the outward movement of middle-class people with children who are interested in education and who will support education in our city. It can only damage the school system over the long run.

Senator **Spong**. May I ask you if the mobility, based on your present and past observations, is such that if mathematical racial balance is required, a new school plan will be necessary every year?

Mr. **Thomas**. Undoubtedly, because of the great movement and mobility in the area.

We have this situation. Our next city is Virginia Beach, which has a great deal of unused land area, and I think it is one of the largest unused land areas in the country, and I think it is a resort community which is a very nice place to live, and the black percentage in their schools is 9 percent, compared to our overall 42 percent. We are in competition with them for good, solid, upstanding residences or residents.

If our school system is in turmoil, we lose one of our major competitive tools, because our school system now is such that we can demonstrate it is better by all of the qualitative indicators than the school systems around us, but how long is that going to last?

They are a suburban community and coming up fast to get us, so people are willing now, although their schools in some degree are very crowded, but people, because of the upheaval in our system, have talked favorably of bringing their children down there.

One city is just run right together with the other, and you can't tell where one ends and the other starts.

Senator **Spong**. In my opening statement, I referred to an expert who surfaced in Norfolk 2 or 3 weeks ago, and, after very limited exposure, presented a plan based on a stand by the Justice Department, for the entire elementary school system in Norfolk.

I would first ask you to confirm that that is correct. Second, I would like to ask the following. I have introduced into the hearings the petition for writ of certiorari on the part of the city of Norfolk. Am I exaggerating, am I misstating when I say that the Norfolk Board, in an effort to find a plan that would present stability, desegregation, and educational expertise, spent more than 1,000 hours, consulted Dr. Pettigrew of Harvard, a nationally recognized educational expert in this field, and relied—and I believe it is the first school system in the United States to do so—upon the Coleman plan as a basis for devising its own plan.

Is that an accurate statement?

Mr. **Thomas**. That is right.

Senator **Eagleton**. Congressman Preyer, any questions?

Representative **Preyer**. Thank you, Mr. Chairman.

I might ask two brief questions of Dr. Profitt, if I may.

Dr. Thomas testified that under the new plan in Norfolk, as I understand it, 60 percent overall of all blacks will be in integrated schools this fall, which strikes me as a very considerable accomplishment when measured against other highly urbanized areas in this country, and I would like to ask Dr. Profitt if he could give us the figures for the record of what percentages would be in his district.

Dr. PROFITT. In both junior and senior high schools, we will have 100 percent of black students in predominantly white schools, and in the elementary schools we will have approximately 60 percent, for an overall percentage, throughout the school system, of about 75 percent of the black pupils in predominantly white schools.

Representative PREYER. So that your overall percentage will be 75?

Dr. PROFITT. Yes.

Representative PREYER. This is in an urban area, and in a conservative political district. It is a substantial accomplishment.

One final question. Mr. Thomas mentioned several examples of resegregation in the Norfolk community. Could you briefly comment on the example of the Gunn School in Burlington as an example of resegregation?

Dr. PROFITT. Of course, the only remedy that the Office of Civil Rights has ever suggested to us on this one--apparently they shy away from suggesting busing—was the pairing of three schools that are within the general locality, and we have resisted this precisely for the reasons outlined in Norfolk.

We are familiar with what happened in Norfolk, and in a lot of urban communities of that sort across the country, and we could very reliably predict this is what would happen if we went into this pairing scheme.

It seems to me what all of us want here is a remedy that will indeed be a remedy, and not a shortsighted thing. We need to be looking for the results we will get, and not the theoretical possibility that might be there if everybody behaves the way we wished that they would.

Representative PREYER. As I recall it, in the Gunn School, that was originally an all-black school.

Dr. PROFITT. That is so.

Representative PREYER. You rezoned in order to include white students in the school?

Dr. PROFITT. Yes.

Representative PREYER. As a result, did you not begin the school year with something like 300 white students in this school, and now, at the end of the school year, isn't it something like 10 white students as a result of resegregation?

Dr. PROFITT. We have gone on in Burlington, right now, as a result of the decision of the school board, to consolidate into the Gunn School the pupils from a predominantly white school, the closest school.

We have a boycott going on now, on the part of the parents of those white pupils that would have been assigned to this school, but we do have as of yesterday 17 white pupils actually present at the school.

Representative PREYER. Thank you, Mr. Chairman.

Senator EAGLETON. Let me ask a general question of all three witnesses, and we have not heard, but we will soon hear from Mr. Epps of the Richmond School Board. In Senator Spong's bill, section 4 lays out some criteria or examples, so to speak, of disparities between schools, the comparability section, and could I ask each of you three gentlemen to comment with respect to each of your school systems as to the comparability of facilities, as spelled out in section 4, with the criteria being (A) through (H) on page 4?

Dr. **Profitt.** I don't have the bill before me here.

In terms of comparability, we have invited the Government people to tell us any instance they see of any evidence whatsoever of discrimination in facilities, in personnel, in the materials, in the training and competence of people who work in the school, any of these things, and we have never had any charge of this sort brought against us at all.

The Government, even in our administrative hearings, showed a willingness to stipulate in regard to these things, that there were no charges of discrimination.

Mr. **Epps.** I might comment, Senator, I think that in individual cases in both the predominantly black and the predominantly white schools, I would have to admit to overcrowding, because the neighborhood patterns change so rapidly the construction won't keep up.

We had it on both sides of this problem, not just on the black side, so we must plead nolo contendere to some charges, and inadvertent overcrowding, but with that exception I think I could go along with the comparability.

In other words, I don't think there is discrimination in the overcrowding comparability, but we just find ourselves with maybe a pattern changing overnight, and we have one school that is 50-percent filed, and we have one that is 125-percent filled, and have to take care of them with temporary classes, but with that exception I would say the comparability we would come off—well, we are equal, but some people are more equal, and Federal funds help to give more construction and more compensatory cases in the poverty than these other areas.

Mr. **Thomas.** At one steps of our court case, the Justice Department, with the help of the FBI, came into our system and spent considerable time going over it with a fine tooth comb, we believe, to discover specific instances of discrimination within our system.

They came up with one thing, and that was the way we were assigning substitute teachers, which our personnel officer had a reasonable explanation for. He was planning to change it at his earliest opportunity, anyway.

That is one thing we were very proud of, that with this scrutiny that we were able to, or that they were able to come up with nothing.

I mean this. They went into inventory and supplies at various schools to compare them, and things like this.

I echo what Mr. Epps just said, that in some instances you will have crowding in white or black schools, but by and large in looking at our financial statement at the end of the year, in which we have perpupil costs separated for each school, the predominantly black schools, the inner city schools, will come out with more resources allotted per student than the predominantly white schools, and on top of that, we put the Federal programs, which really brings it up.

We have transferred several principals from all-white schools to predominantly black schols, and several of them have mentioned to me they were amazed at the equipment that these inner city schools had compared to the equipemnt that they had in their suburban type schools.

Now, I think that you will find that discrimination, and this is a policy of our school board, we tell everybody, "If you find overincidence of discrimination, then bring them to us."

We don't want discrimination in the school system, and we will do away with it when we find it.

Dr. Profitt. If I may comment to that question, as I now read Senator Spong's bill, and in a little more specific fashion: The school which is giving us the difficulty in coming to agreement with the Government is one of our more modern facilities, with plenty of room and space, and we have the loweset perpupil teachers ratio in that school, which is one of the more significant indices that could be used in determining a thing of this kind in any elementary school in the district.

We have assigned to it a full-time expert person as coordinator of the curriculum and instruction, just for that one school, and we have never done that before in the school system's history for any school.

We have a reading laboratory in that school, which has been characterized or was characterized in our hearing, as a matter of fact by Dr. Muriel Crosby, one of the nationally known educators in this country, as being as fine as she had ever seen, and we don't have this in any of the other schools. Those are the specific kinds of replies I might make to your question.

(Biographical information received on Mr. Thomas follows:)

Name: Vincent Johns Thomas.
Born: Norfolk, September 20, 1922.
Married: Elizabeth Carroll, Martinsville, Va. Children: 1 boy (13 yrs.), 1 girl (17 yrs.).
Schools:
  Norfolk Public Schools: Graduated Maury High School 1939 (Honor Graduate, President of Class), (Letters Basketball, Tennis (Team Capt. 1939).
  Graduate: Virginia Military Institute 1943, (B.S. Electrical Engineering, Honor Graduate), Winner: French Award for Pure Mathematics, Letters Basketball, Tennis (Team Capt. 1943).
Service: U.S. Army Signal Corps. 1st Lt. 1943–46.
Employment: Johns Bros., Inc., President.
Religion: Episcopalian, St. Stephen's Episcopal Church, Norfolk (Former Senior Warden & Member of Vestry).
Civic:
  Member, Norfolk City School Board (Elected 3/10/60) Elected Chairman 7/64.
  Member, Board of Trustees, Hampton Roads Education Television Assn.
  Member, Board of Directors, Leigh Memorial Hospital.
  Member, Board of Directors, Boy's Club of Norfolk.
Alumni: President, Virginia Military Institute Alumni Assn.
Business:
  Member, Board of Directors, Tidewater Oil Heat Assn. (Past President).
  Member, Norfolk Chamber of Commerce.
  Member, Norfolk Retail Merchants Association (Former Board Member).
  Former Member, Board of Directors, Hampton Roads Maritime Assoc.
  Past President, Sales & Marketing Executives of Tidewater, Va., Inc.
  Member, Board of Directors, First National Bank of Norfolk.
  Former Member, Board of Directors, National Oil Fuel Institute, Inc.
October 31, 1969 Named by the Virginia Education Association as the State's Outstanding School Board Member for 1969.
April 14, 1970 Elected Vice Chairman, Steering Committee, Council of Big City Boards of Education.

Senator Eagleton. Thank you, gentlemen.

Now, finally, we have A. C. Epps, vice chairman of the Richmond City School Board.

STATEMENT OF A. C. EPPS, VICE CHAIRMAN, RICHMOND CITY SCHOOL BOARD, RICHMOND, VA.

Mr. Epps. Thank you, sir.

I will deviate from the prepared statement by abbreviating it and skipping quotations and citations and a couple of self-serving declarations, and I hope I can abbreviate this hearing.

John Gardner says this:

> A nation is held together by shared values, shared beliefs, shared attitudes. That is what enables a people to maintain a cohesive society despite the tensions of daily life. That is what enables them to rise above the conflicts that plague any society. That is what gives a nation its tone, its moral style, its moral capacity to endure.

This to say, in another way, I think, that our Government gets its powers from the consent of those governed, and whenever the law deviates too much from those values, those morals, those attitudes, there is cause for concern.

I don't have to belabor the point, but national prohibition was a case where the law deviated from these values and something was done about it in that case. In that case the Nation changed the law.

We now see this happening in maybe the case of marihuana, and in the case of abortion where the values as expressed in some stringent statutes run counter to the values of a great many of those governed.

When this gap occurs, something has got to give. This gap cannot continue or we are inviting disaster.

Now, my concern for the good of education is focused on this point in our local situation and elsewhere. The local court has held that any retention of a neighborhood school system, even for toddlers, that is kindergarten, negates the unitary system; that the wishes, directions, attitudes, and objections of the individual members of the class of plaintiffs are inadmissible and irrelevant; that gerrymandering satellite zoning and long bus rides must be utilized to obtain racial balance; and that reliance on public transportation must apparently be supplanted by purchase and operation of buses by the school system itself.

Now, the objections to the scuttling of the neighborhood schools and to the long bus rides comes from both sides of the spectrum, both races, black and white, people of good will and people who admittedly are not of good will, but almost universally.

A member of our school board itself went on television to bewail the fact that his 9-year-old black child had to be bused across town and not be allowed to go to his neighborhood school.

Now, we don't have time to go into the motivation for this. In all fairness, I must say that some of the aims of the blacks are different from some of the aims of the whites who object, but they certainly all object to this dislocation and disruption.

For example, at our city council hearing, at which there was an open discussion by citizens on appealing the school board case, nine of 11 blacks who spoke against the fact that their children would be bused away from their neighborhood schools and this is to illustrate how important the neighborhood schools are and how disrupting is the present policy.

Just as a matter of interest as to neighborhood schools Senator Spong said they are convenient for the public. Our school board found the neighborhood schools enable us to communicate with the parents and communicate with the family, so it is a two-way thing, not just to communicate with the parent, but we can communicate at the neighborhood level, but when we get to the middle school and high school level, however, we have a little trouble and we think the neighborhood school is necessary unless we will have an impersonal system of schooling.

Now, some effort we think should be made to narrow this gap I described, and I consider this bill does narrow the gap and produces a circle and allows the neighborhood schools to remain, and I believe will allay much of the disruption we now see.

Now our system is built on checks and balances and somebody said that James Madison wrote so many checks and balances in the system so strongly that the Government wouldn't function; it would get on dead center and nothing would happen, unless strong leadership is forthcoming.

That may be true, but I suggest that the time now is for Congress to furnish this strong leadership and get us off of this dead center, get us out of this confusion.

I would like to illustrate two ways, first, confusion between the executive, legislative, and judicial branches, which our system has experienced.

On the legislative level, the provisions of the Civil Rights Act about transportation we thought had meant, well, I won't say "meant what it said," but I will say we thought it meant that transportation was not to be required.

In our own case, in an effort to produce an acceptable plan of desegregation, we went to HEW and enlisted their help, and together we came up with a plan; they worked a plan up, we adopted the plan, we presented it from the executive to the judicial branch, and the judicial branch rejected it out of hand.

So that is legislative, and that is executive. Now we are in the judicial, so those three—and lawyers are perplexed, and heaven knows laymen are confused and bewildered beyond our imagination.

Now, just in the judicial field itself, you look at the circuits, and you look at the seventh circuit and sixth cricuit, and they say, "You don't have to worry about transportation; that is not necessary for desegregation."

But the fourth circuit says it is.

We submit this is a variance between the circuits and somebody has to thrash or straighten out this. We recognize Congress can't straighten out a variance between circuits. You can't give me a writ and I am not seeking one, but this is the type of confusion with which your school boards, especially in the South are faced.

Now, I am not going to fight the battle of de facto and de jure. De jure segregation, I mean. I just point out it is a distinction without a difference.

Such people as Ramsey Clark say there is no difference and former Secretary Finch, as you know, has said that this distinction is no longer valid, and segregation or racial isolation, wherever it appears, is one and the same. We agree with that.

Judge Hoffman in his opinion has a wonderful and thorough and comprehensive discussion of the de facto against de jure and ends up by saying that he doesn't think any segregation can be de jure.

I might say I think that part of his decision must have been right, although it didn't take the fourth circuit long to scrap the rest of it.

Now, one final point and it has to do with resegregation. You gentlemen have read, I am sure, of the tipping point where the minority or disadvantaged race percentage as opposed to the larger enriching percentages reaches a point where from that point on it is educationally nonadvantageous.

Dr. Coleman and Dr. Pettigrew have testified about it, and they said it would be in the 35 to 50 percent range, that is, those who are less advantaged.

Tipping has been recognized in the Federal cases and it has been recognized by fourth circuit in the *Swann* case.

Now I ask you to consider, therefore, the implications of a city such as Richmond where we are hemmed in with political boundaries around us and we can't grow and the school population is 60 percent black and 40 percent white.

Even if we could get perfect racial balance, we are past the tipping point, so that from an educational point of view we have not accomplished anything.

But, really, the worst thing to consider in our point of view is the almost certain resegregation which will follow in our schools if racial balance and large busing are decreed, not just school by school, but in the whole school population and the population of this community as a whole.

Law reviews have said (citing authorities):

> Schools that are more than 50 percent black are usually on the way to becoming all black.

This is citing The Social Context of De Factor School segregation quoted in the Cornell Law Quarterly.

We ought to be able to get some rules on segregation without driving everybody past the tipping point of resegregation. The problem of resegregation in the city of Richmond and in our schools is a continuing terrible dilemma.

Our studies—and I have attached an exhibit to my transcript—show you how rapidly a school will shift from all white to all black by housing changes, just by the shifts of population.

Now, in addition to that, our school board was so concerned by the rapid turnover in the north side of our city that we employed an urban team to give us a study in depth of resegregation in that part of the city. From the lengthy report, I have excerpted one or two quotes briefly:

First:

> As the Negro moves from the core of the city to the fringes, it seems that the Negro drives the whites further from the city, perpetuating racial isolation.

Well, in our case, since we have historical city boundaries and since we are having this pressure from the inside, we are going to have a black system unless something can be done. It seems like a Greek tragedy, but I don't know how to escape it.

Referring back to this report:

> There can be no doubt but that many of the solutions of the problems of the north side school lie outside of the decisionmaking power of the school officials. Patterns of residence, social class differences, and racial tensions all have impact upon the schools. . . .

Most of the blacks would have us do something we cannot do, and that is attack and change, if we could, the housing patterns, the zoning laws, and the instances unfortunately that still exist, of private discrimination, all outside of the school board's power.

Now, with the announcement of the decision in the *Richmond School Board* case, movement has been accelerated by these white citizens to the suburbs. Private schools have been organized and those that exist are filled to overflowing. Our orientation sessions—we must open next Monday—for the various schools have been disappointingly light. This indicates to us not only has resegregation begun, that started some years ago in Richmond, but its pace is quickening to alarming proportions.

Gentlemen, the President stated:

> Few public issues are so emotionally charged as that of school desegregation, few so wrapped in confusion and clouded with misunderstanding. None is more important to our national unity and progress.

Mr. Chief Justice Burger has said in the *Northcross* case:

> . . . as soon as possible, however, the Supreme Court ought to resolve some of the basic practical problems when they are appropriately presented including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court. Other related issues emerge. . . .

All agree that the time for solving these problems is now, or else in the past, but we can't do it any sooner.

I submit that Congress rightly should assume the leadership and that a solution is provided by the bill under discussion.

I further submit that enactment of the National School Desegregation Act of 1970 is in the public interest and is long overdue. Thank you.

(A brief biography on Mr. Epps follows:)

AUGUSTUS CHARLES EPPS

A. C. Epps is a native Richmonder. He received his early education in the Richmond Public Schools. He graduated from the University of Virginia in 1936, with a B.A. and Phi Beta Kappa. In 1938 he received his LL.B. degree from the University of Virginia Law School as a member of the Order of the Coif.

Upon being admitted to the Virginia Bar, he became associate attorney in 1938 with the firm of Christian, Barton & Parker. He served in the Army of the United States from 1942–1946 where he attained the rank of major. Upon his return to Richmond he became a partner in the firm now known as Christian, Barton, Parker, Epps & Brent.

Mr. Epps' affiliations include the Richmond Bar Association, the Virginia State Bar, the Virginia State Bar Association, the American Bar Association, the American Bar Foundation (Fellow), the American College of Trial Lawyers, the International Association of Insurance Counsel, the Association of Life Insurance Counsel, and the Bar Association of the City of New York. He has served on many committees for these organizations including the posts of President of the Richmond Bar and also member of the Executive Committee, President of the Virginia State Bar in addition to being Chairman of the Joint Committee on Legislation and Law Reform and a member of its Executive Committee, Chairman of the A.B.A. Committee on Legal Education and Admission to the Bar (for Virginia), and member of the A.B.A. Committee on Professional Grievances and A.B.A. Committee on Specialization.

He is the author of various articles appearing in law reviews and legal publications.

Senator PELL. Senator Spong.

Senator SPONG. Mr. Epps, I just want to thank you for your statement and say that on the two points—the confusion that exists and resegregation—, I think you covered this very well and that you demonstrated that in the case of the city of Richmond we are heading toward what Senator Ribicoff has predicted, which I quoted, I am very appreciative of your coming here and giving the subcommittee the benefit of this testimony. Thank you.

Senator EAGLETON. Congressman Preyer, any questions?

Representative PREYER. No questions. Thank you.

It was an excellent statement.

Senator EAGLETON. My thanks to all three of you gentlemen, Dr. Thomas, Mr. Profitt, and Mr. Epps, for being with us, and we apologize once again for the coming and going that occurred during the morning hours and we appreciate your bearing with us under the circumstances.

At this point I order printed all statements of those who could not attend the hearings and all other pertinent material submitted for the record.

(The information referred to follows:)

STATEMENT PRESENTED BY EWALD B. NYQUIST, PRESIDENT, THE UNIVERSITY OF THE STATE OF NEW YORK AND COMMISSIONER OF EDUCATION

I am submitting this statement as President of the University of the State of New York and Commissioner of Education. I thank you for the opportunity to express my convictions about the Emergency School Aid Act of 1970.

At the outlet let me say I applaud the principle of S. 3883. It represents an ambitious commitment to attain equality of educational opportunity for every child in the United States and is backed by a substantial financial investment. Such changes as I recommend are based on experience and are proposed to open positive avenues to attain the purposes of the Act.

I

My comments on this Bill should be considered against the backdrop of a lengthy history of commitment in New York to equal opportunity in education and to the achievement of quality in education. Let me share some milestones in that history.

In 1867 the Legislature established a system of free public schools which eliminated separate schools for certain poor families known as "pauper schools."

In 1900, recognizing the inherent inequity of separate educational facilities based on race, the New York State Legislature prohibited discrimination in education because of race, color or creed (Section 3201, New York State Education Law).

In 1948 the Board of Regents of the State Education Department established an office to administer the Fair Education Practices Act, to insure equality of opportunity in higher education.

In 1956 the Division of Intercultural Relations was created in the State Education Department to assist schools in the development of programs designed to achieve integrated education.

In 1960 the Board of Regents stated that the maintenance of segregated schools is contrary to Regents Policy and detrimental to children, whether that segregation grew from residence patterns or from positive action by local school authorities.

In 1966 the judicial authority of the N.Y. State Commissioner of Education to order a school district to implement a desegregation plan was upheld by the United States Supreme Court (Matter of Vetere v. Allen, 382 U.S. 825).

In 1966 the New York State Legislature appropriated $1 million to assist schools in implementing desegregation plans.

In 1967 the judicial authority of the Commissioner of Education to order a school district to implement a plan to alleviate racial imbalance was upheld by the U.S. Court of Appeals, Second Circuit (Offerman v. Nitkowski, 378 F. 2nd 22).

In 1967 the New York State Legislature continued its encouragement for equal opportunity by the appropriation of $3 million to assist schools to improve the quality of education through integrated schools. This appropriation level has continued to the present.

In 1968 the Board of Regents published the position paper "Integration and the Schools" reaffirming and elaborating on the 1960 statement of policy.

In 1969 a study by the State Education Department, *Racial and Social Class Isolation in the Schools*, was completed and, as a consequence of its findings, the Regents reaffirmed their 1968 position in another position paper.

It is clear from the foregoing that we consider the proposed Emergency School Aid Act of 1970 with a background of many years committed to achieving its objectives.

II

We approach consideration of this Bill with strong conviction. It is incumbent upon us to create conditions under which each individual may grow in self-respect, respect for others and the attainment of his full potential. This means creating positive conditions to enable each individual to choose alternative avenues for access to the mainstream of American life. This means eliminating those negative conditions which perpetuate separation from the mainstream of American life.

Education is but one avenue toward the good life. In the early years it is the major avenue beyond the home. It is significant because it helps create the image a child has of himself and, in the last analysis, prepares him for the roles he will adopt in adult life. It is significant because within the microsociety of a school, a future society is constructed by the daily experiences of each child.

Alexis de Tocqueville spoke prophetically in *Democracy in America* of the tendency of American society to separate each man from the other. He spoke of American society's tendency to insist upon conformity and its haste to define a man solely by the function he performs or the occupation he chooses. Democracy values open expression, free communication and interaction with others on the basis of respect for the full personhood of each individual. Its ideal and its recommended structure for governance is premised on the participation of all persons in the community. In a very real sense, then, in considering this Bill, we address the fundamental characteristics of contemporary American society and the values of democracy.

III

RECOMMENDATIONS

From the perspective, then, of experience with the creation of equal educational opportunity and from this brief appraisal of its meaning to society, we commend S. 3883. I would suggest, however, that the Bill before you may be improved substantively in these respects:

A. The distinction between *de jure* and *de facto* segregation should be eliminated because the basic question is racial and cultural isolation.

B. Incentives for integrated or cultural education should be provided by:

1. Redefinition of eligibility criteria to permit financial assistance for racially or culturally isolated schools;
2. Eliminating express conferral of authority on Secretary of Health, Education and Welfare when discretion already is being exercised;
3. Establishing the equality of local educational agencies through elimination of the double-counting provision or, alternatively, its extension to act as a positive reward for voluntary action; and
4. The inclusion of national origin minority children.

C. Investment in educational structures should be reviewed to:

1. Build upon the experience-base acquired by state education agencies; and
2. Accord greater latitude in the transportation provision.

A. The distinction between de jure and de facto segregation

The maintenance of the distinction between *de jure* and *de facto* segregation is grounded in the reasoning in the *Brown* Case in which the criteria of equality of educational opportunity were related to the effect upon schooling of social inequality, and equality was made conditional upon scientific proof or judged reasonable because of scientific evidence. Better grounds, hindsight suggests, would have been that the opportunity for access to the mainstream of society can not be denied a citizen on the basis of arbitrary classification by a physical or cultural attribute. Beyond the sociological and psychological arguments ground the *Brown* reasoning lies the educational soundness of cultural education in an American society, traditionally a "salad bowl" of diverse cultural strains.

The arguments advanced in support of public education for over a century are persuasive. 1. Fully participation in the life of the community is a right conferred by citizenship. In order to participate intelligently in the decisions of a democracy, free men are entitled to a system of publicly supported schools available equally to all. 2. It is the right of a citizen to have full access to the community. The right of citizenship confers the right of movement and of communication. It is intended to create an open society in which all men are respected and have the opportunity for full development and pursuit of their talents.

3. Classification on the basis of a physical or cultural attribute which operates to exclude a person from a particular area of the public realm means that a person's choice of action may be limited to assigned functions in the community. The function of education, however, is to enable individual choice so that no human being, and no class of human beings, need to be in practical subjection to any other. 4. The contact between human beings made possible by access to life in the community, because of the right of citizenship, would have the following advantages:

(*a*) All the children of all classes could benefit by learning to know each other in the common experiences of schooling;

(*b*) Children of the poor could benefit by the "more careful superintendence" given the education of the children of parents better situated; and

(*c*) No child would, because of the system of schooling, be confirmed in a debased image of himself.

To perpetuate the distinction between *de facto* and *de jure* segregation is an effective denial of equal protection of the laws to millions of children. The effect of unequal opportunity upon children, as evidenced by their educational and personal attainment, is the same, irrespective of the cause of the social or cultural isolation of a school. The impact upon children by uneven distribution of federal resources will be such as to favor one group over another, and one area of the country over another, without reasonable cause and because of arbitrary classification.

I urge Congress to take the affirmative duty to resolve inconclusive judicial opinion by eliminating the distinction between *de facto* and *de jure* segregation. To continue the distinction is to risk ineffective response in our school systems.

B. Incentive for integrated or cultural education

1. Redefinition of eligibility criteria for financial assistance.—We believe that *de facto* segregation should be defined or understood in such a way as to allow for preventive action. To wait until a school has become 50% minority, when this could have been prevented by earlier action, is unwise. There are districts in New York State in which each school now approximates the district wide composition, even though the ratio of minority group students is well below 50%. Such districts, by acting early we believe, have prevented accelerated concentrations of minority children in a few schools. Interestingly enough, such districts have succeeded in re-establishing the common-school concept, a concept widely held to be our country's major contributor to educational practice. I recommend therefore that Section 5: Eligibility for Financial Assistance and Section 9 (g): Definitions, be amended to reflect this situation.

State education agencies should be made eligible for financial assistance under approved State plans if their previous performance effectiveness can be established. State agencies, in turn, would act on local applications. In the alternative, it is suggested State agencies be delegated the responsibility to approve and recommend to HEW local agency applications for funding.

2. Elimination of Express Conferral of Authority upon Secretary of Health, Education and Welfare for Set Aside.—To confer authority upon the Secretary of Health, Education and Welfare, when this discretion is at present being exercised, would appear unnecessary and redundant. The President's request for $150 million for "start up" funding was based upon existing authority of the Secretary.

3. Establish Equality of Local Education Agencies through Elimination of the Double-Counting Provision or, Alternatively, its Extension to Act as a Positive Reward for Voluntary Action.—Under the proposed legislation, only those local education agencies implementing desegregation plans, pursuant to a final federal court order, or plans approved by the Office of Civil Rights of the Department of Health, Education and Welfare, are eligible for augmented federal funding.

This means that the following kinds of school action are excluded:

(*a*) Where a *de facto* rather than a *de jure* desegregation plan is being implemented; or

(*b*) Where a state commissioner's order has the effect and validity of a federal judicial order; or

(*c*) Where a local education agency, without federal or state compulsory action, implements a plan at the request of state education agency staff; or

(*d*) Where a local education agency voluntarily initiates a plan.

To eliminate these local agencies from qualifying for financial support or, in effect, to penalize them for positive action, and to support local agencies that desegregated only under the negative requirement of federal court order or HEW direction is unfair and mitigates against the "multiplying effect" sought by the Department of HEW through federal financial assistance.

This inequity is compounded by the double-counting provisions which doubly reward a local agency for token desegregation efforts only after negative or legal compulsion.

In view of these inequities and at a minimum, because the purpose of this legislation is to hasten the realization of equal opportunity in education, it is recommended that no local agency secure funding for "racially isolated" programs until the infeasibility of a full desegregation plan is effectively demonstrated.

In the alternative, it is recommended that, if it is felt that double-counting provisions should remain for local agencies desegregating under federal legal compulsion, a comparable provision be inserted to act as an incentive for those agencies which take the initiative for positive action and voluntarily demonstrate effective or innovative ways of desegregating.

4. Definition of Minority Group Children.—S. 3883 is to be commended for its inclusion of national origin minority children. All too frequently children, temporarily handicapped by cultural differences, find themselves "typed" as mentally or emotionally handicapped. It is indeed shocking that the norm is more important than an individual child and that nonconformity to the norm has effectively resulted in the inhumane repression of diversity and personality.

A sound educational experience presupposes the presence of ethnic diversity in classrooms. Without the experience of an interplay of cultures, pupils are as effectively deprived of a sound education as are those termed racially isolated.

IV

Our allegiance to our society and Nation is accorded not because this Nation exists as a fact but because it embodies a set of shared beliefs. We pragmatically judge the activities of society by the degree to which they affect the freedom, equality, and independence of the individual person.

Education bears major responsibility for seeing to it that children learn the meaning of this fundamental purpose.

Our imperfect educational system makes difficult for some children the realization and understanding of this basic ethical belief. The measure before the Congress, S. 3883, is therefore of the utmost significance.

U.S. Catholic Conference,
Department of Education,
Washington, D.C. August 20, 1970.

Hon. Claiborne Pell,
Chairman, Education Subcommittee, Senate Committee on Labor and Public Welfare, Old Senate Office Building, Washington, D.C.

Dear Senator Pell: On behalf of the United States Catholic Conference I am submitting testimony regarding S. 3883. My statement is accompanied by separate statements from the Rev. John M. Bond, Superintendent of Schools, Diocese of Charleston, South Carolina and the Rev. John McCarthy, Administrator of St. Theresa's School, Houston, Texas.

Father Bond's statement gives a succinct outline of the experience of a Catholic school system in achieving desegregation through cooperation with the Office of Civil Rights of the Department of Health, Education, and Welfare in an area of the nation where public schools formerly were in the category of *de jure* segregation. I believe the experience of the Charleston diocese will be helpful to the committee in considering the participation of private schools in the proposed Emergency School Aid Act. Father McCarthy's statement, based on long experience in the southwestern portion of the country, indicates the problems with regard to the Spanish speaking population of the United States.

I would like to request that the statement of the United States Catholic Conference and the statements of Father Bond and Father McCarthy be entered in the record of your Committe in regard to public hearings on S. 3883.

Sincerely yours,

Rev. Msgr. JAMES C. DONOHUE,
Director, Division of Elementary and Secondary Education.

STATEMENT OF U.S. CATHOLIC CONFERENCE ON EMERGENCY SCHOOL AID ACT S. 3883, AUGUST 14, 1970

(Msgr. James Donohue, Director, Division of Elementary and Secondary Education; Rev. John McCarthy, Pastor, St. Theresa's Church, Houston; Rev. John M. Bond, Superintendent, Diocese of Charleston.)

Our Catholic school system shares in the national commitment to integrate education. As Director of the Division of Elementary and Secondary Education of the United States Catholic Conference, I would like to endorse the purposes of the Emergency School Aid Act of 1970 as set forth by President Nixon in his message to Congress on May 21 of this year.

In requesting enactment of this legislation, President Nixon said that the purpose of the legislation would be to assist local school authorities in meeting four special categories of need as recited in his statement of school desegregation of March 24:

The special needs of desegregating (or recently desegregated) districts for additional facilities, personnel and training required to get the new, unitary system successfully started.

The special needs of racialy-impacted schools where *de facto* segregation persists—and where immediate infusions of money can make a real difference in terms of educational effectivenes.

The special needs of those districts that have the furtherest to go to catch up educationally with the rest of the nation.

The financing of innovative techniques for providing educationally sound interracial experiences for children in racially isolated schools.

To achieve these purposes, the President has proposed the Emergency School Aid Act of 1970 (H.R. 17846 and S. 3883). The Act contemplates three categories of federal aid to elementary and secondary schools which are faced with problems of eliminating *de jure* segregation and overcoming racial isolation. The three categories of aid are:

"1. To assist any local educational agency which is implementing a plan of desegregation to meet the additional costs of implementing such plan or of carrying out special programs or projects designed to enhance the possibilities of successful desegregation;

"2. To assist any local educational agency to meet the additional costs of carrying out a plan to eliminate or reduce racial isolation in one or more of the racially isolated schools.

"3. To assist a local educational agency or other public or private agency, institution, or organization to carry out interracial educational programs or projects involving the joint participation of minority group and nonminority group children attending different schools."

The main thrust of the Emergency School Aid Act, necessarily, is to assist public school agencies that are in the process of eliminating *de jure* segregation pursuant to federal court orders or plans approved by the Secretary of Health, Education and Welfare, and to offer financial assistance to those school districts which are willing to undertake voluntary efforts to eliminate *de facto* segregation and racial isolation.

Under the various court decisions in the area of school desegregation, private non-profit schools do not fit within the definition of *de jure* segregated schools. It is an historical fact, however much we might deplore it, that private schools have suffered from *de facto* segregation situations arising from complex social, economic and local legal requirements in years prior to the Supreme Court decision of 1954. It is no less a proper concern of the federal government that such situations be eliminated in the private schools as in the public schools.

Hopefully, the nation can look to the private education sector to provide some measure of leadership for the nation in eliminating the evil effects of segregated schools as well as racial isolation arising from causes outside the educational system. If the private schools of this nation are to perform this leadership role they will need every possible assistance from the federal government, both financial and otherwise. Such assistance should be given to private schools because of the public service which they can perform, and which I am convinced the vast majority are anxious to undertake.

It is the policy of the Catholic bishops of the United States, through the United States Catholic Conference, to conduct a school system which makes available quality education without discrimination on the basis of race. I believe this policy is shared by other private school systems long established in this nation.

In addition to the responsibility which Catholic education has to provide an example for the nation in this regard, the United States Catholic Conference strongly supports the decisions of the United States Supreme Court and the implementation of those decisions as evidenced by the Emergency School Aid Act. We believe that the needs of the nation's schools, both public and private, in carrying out the national policy of non-discrimination, warrants special financial assistance from the federal government. For this reason, we support the central purposes of the Emergency School Aid Act and urge Congress to enact such legislation.

I want to commend the sponsors of the Emergency School Aid Act for their recognition of the role of private schools in our national education system by the inclusion of Sec. 7(a)(4). This section requires that an application from a local education agency for assistance may be approved by the Secretary of HEW only if he determines that such agency has made provision for special educational services and arrangements which are designed to overcome the effects of racial isolation of children enrolled in private as well as public elementary and secondary schools. The requirement would apply "to the extent consistent with the number of children in the school district of such agency enrolled in private elementary and secondary schools which are racially isolated." I believe the wording of this section can be improved to facilitate the desired goal of assisting private as well as public schools and to better utilize the private sector in achieving the overall purpose of the legislation which is "to reduce racial isolation and increase integration in all schools."

The wording should not be limited to requiring participation of "children." It should also require the participation of "teachers and other educational personnel" in the private schools. Experience in the area of school desegregation and racial integration has shown that special training is needed by administrators and teachers. Indeed, the Secretary of HEW has stated that the administration expects to fund teacher training programs under this legislation. Private school teachers and administrators could take part in the same programs as public school teachers and administrators, or the local school district might wish to establish special programs for private school personnel.

I am concerned that Section 7(a)(4) might be interpreted to *limit* participation of private school children and teachers rather than encourage it. The term "racially isolated" is defined in the bill as a school in which minority group children constitute more than 50 percentum of the average daily membership. Thus it might be argued that only children in private schools with 50% or more minority group enrollment would be permitted to participate in a program or project. Also, the language might be interpreted as limiting participation only in those public school districts which qualify under categories (2) and (3) of Section 5(a). Such limitations are not placed on the participation of children in the public schools and should not apply in the case of private schools.

If a local educational agency is eligible for financial assistance under any one of the three categories in Section 5(a) then the Secretary should require that applications make provision for participation of children attending private schools in those districts so long as that participation is directed toward achieving the purpose of the act set forth in Section 2. It is possible that some private schools will not want to participate in any effort directed toward racial integration or assisting minority group children to overcome the effects of racial isolation. I know of no way to compel such schools to participate. But their attitude should not be allowed to obscure the fact that such private schools are in a decided minority. The vast majority of private schools in this country will want assistance in overcoming racial segregation in the private sector and will be eager to assist in eliminating segregaton in both the public and private schools of their community.

Experience with other federal programs has shown that in some instances the public schools will refuse to apply for federal funds and thus deny the opportunity for private schools in their district to participate in the federal program. In other instances, the local educational agency will be unable or unwilling, due to local attitudes or legal restrictions, to cooperate with the private schools. To cope with both situations, the bill should contain specific authority for the Secretary of HEW to provide financial assistance directly to private schools upon a determination by him that: (1) such assistance would carry out the purposes of the Act; (2) the local educational agency is unable or unwilling to provide for *effective participation* of student and faculty in private schools *on an equitable basis*. Similar authority was added to Title III of the Elementary and Secondary Education Act by Congress in 1969 and is in the process of being implemented.

It is my understanding that the original draft of this legislation prepared by HEW omitted any requirement for the participation of children in private schools and that the Department of HEW has recommended that Section 7(a)(4) is not needed. The position of the department is that there is already sufficient discretion in the bill to include private school children in programs wherever local education agencies wish to do so. I strongly disagree with this viewpoint and urge that Congress include a positive requirement for participation of private school children and faculty. Experience under other federal programs has shown that more often than not private schools are allowed to participate only when the law requires the opportunity for such participation as a condition of eligibility for the local public school agency.

The provisions of this bill seek to recognize that in the case of some racially isolated children the desired goal of education in an integrated school cannot practicably be provided. Authority is contained in the bill to fund projects to overcome the adverse educational effect of racial isolation upon such children. I would like to point out that in some such cases there exist private school systems that have the facilities, the faculty and the desire to provide an integrated educational setting for such children. What is missing in most such cases is financial ability on the part of both the private schools and the racially isolated children. The Act should recognize this fact and permit the use of such private school systems to achieve the goal of integrated education.

I want to call attention to the wording of Section 6(g) which authorizes financial assistance for the provision of transportation services for "public school children." The word "public" should be stricken in order that private school children participating in programs under the Act would also be able to receive transportation services. As the bill stands, this section would result in discrimination against private school children in the area of transportation services which is not present in any other federal education program.

Section 8 of the bill permits the Secretary to establish an order of priority to be followed in approving applications and requires that in determining whether to make any grant the Secretary shall take into account such criteria as he deems pertinent, including four listed criteria. Consideration should be given to the addition of a fifth criteria which would include the degree to which the program or project makes use of the total educational resources of the community, both public and private.

In his testimony in support of this legislation before the House General Subcommittee on Education, Dr. James S. Coleman of Johns Hopkins University, who acted as a consultant to the Cabinet Committee on School Desegregation, stressed the importance of the provision for funds to be given to private agencies, in addition to local educational agencies, both in Sections 5(a)(3) and Section 5(b). Dr. Coleman stated: "I think this is very important, and I think it is important that the funds be administered in such a way that this kind of use is encouraged, since there will be strong pressures against it from public school forces. For two reasons, this avenue is important. First, in those areas, whether in Mississippi or in Chicago, where the public school system does not provide the possibility for an integrated education, it is important that such opportunity exist outside the public school system. This opportunity should range from integrated supplements to regular school activities in full-time integrated schools which the child attends instead of his public school—with most expenditures being for the latter. As an incidental benefit, this can provide a leverage to induce integration in the public school system by providing a competitive alternative outside it.

"A second reason that this type of funding is important is because it can provide the opportunity for innovative approaches to integration which may be foreclosed to public school systems. These innovations can provide the experience that will allow the adoption of those that work best by public school systems."

I would like to endorse Dr. Coleman's comment and urge the committee to make clear that this kind of use of private schools should be encouraged in the administration of funds under the Act by the Secretary of HEW. It is the duty of private schools to provide an alternative for children and parents and to provide competition to the public schools. I know of no area in which private schools could provide a better service to American education than to make available the opportunity for integrated education to those children who do not now have such an opportunity. Congress should insure that there is no failure on the part of the Federal government to make use of the total educational resources of the nation in achieving the goal of this legislation as stated by Presiden Nixon in his Message to Congress on May 21, of this year: ". . . a system in which education throughout the nation is both equal and excellent, and in which racial barriers cease to exist."

STATEMENT BY REV. JOHN MCCARTHY, ADMINISTRATOR, ST. THERESA CATHOLIC SCHOOL

I am happy to have the opportunity to testify on behalf of this important and urgently needed legislation. I have read the statement made on June 9th by the Honorable Robert H. Finch, then Secretary of Health, Education, and Welfare and I find myself in agreement with it.

The committee has heard others who have endorsed this bill. I wish to add my voice to theirs and suggest that as the administartor of a well integrated private grammar school, as one vitally interested in problems of Mexican Americans, that I might have some views that the committee needs to take into consideration.

I feel strongly that private schools and more particularly, religious schools, could greatly assist in accomplishing desegregation which is, as President Nixon pointed out, "vital to quality education not only from the standpoint of raising the achievement levels of the disadvantaged, but also from the standpoint of helping all children achieve the broad based human understanding that increasingly is essential in today's world."

For the past 125 years Catholic schools have consistently been among the most diversified in the country. Our schools have reflected the diversity of our people in a way that public schools have not been free to do. Czech, Germans, and Poles had "bilingual" schools over a hundred years before the term became a battle cry for the Spanish speaking of the Southwest. "Neighborhood schools" is what Catholic schools have been from the time of their inception, a factor that now causes many black leaders to suggest their imitation in the black community.

Catholic experience with ethnic minorities is extensive. Catholic education has served as a social, economic, and intellectual ladder for Polish, Irish, German, Italian, Czech and many other ethnic groups. At present the most destitute ethnic group with whom the Catholic Church is working is the Mexican-American. These years of experience in helping new immigrants or cultural groups adapt to the urban realities can be put to good usage if provided with financial support.

The Catholic Church's presence among the white ethnic minorities gives it a tremendous access to leaders of those groups which are most often "threatened" by Negro or Mexican-American neighborhood encroachment. These white ethnic minorities are still greatly influenced by the position which the Church takes in great moral and social issues of the time. Many of the children of these ethnic minorities still attend Catholic parochial schools throughout the country. We are trying now to reach the minds and hearts of the parents of these children and of the children themselves, to assist them in lowering the barriers of racism. If we could be aided in accomplishing this our schools would be aiding the United States immensely in solving its inter-racial conflicts.

The boundaries which are set for parochial attendance zones are not as restricted by artificial geographic limitations as are those set by the public schools. Because the Catholic schools have a broader area from which to draw students they are thereby able to more easily bring in minority group students than are the public schools which must cope with segregated residential housing patterns. Furthermore our flexibility in determining latitude of the attendance zones enables them to be a positive factor in integration.

I feel that my own parish school is a good example of this. Our students are black, chicano and white anglo—they come from poverty families to the very affluent. St. Theresa's school in Houston, is microscopic form, and that's one of the best advantages we offer our students.

I am glad to see that this bill in Sec. 5, 3(b) gives the Secretary freedom to make grants to non-profit agencies and organizations. When the advantages of the private school system can be combined with the financial capabilities of the public school system we are likely to have a better chance of achieving the desegregation of our schools than when they work in a separate fashion.

Many federal programs in the past have had the effect of freezing or locating minority people into racially identifiable neighborhoods. The Concentrated Employment Program, the ESEA monies, the bilingual education monies under Title 7, and numerous other programs all limit eligibility to people who live in a definitely defined geographic area. This limitation, when rigidly applied, forces people to "stay with their own kind" if they are to receive any federal assistance at all. One result of this has been an intensification of segregated residential patterns rather than a movement towards a truly interracial or open society. Thus in the past some programs have had the exact opposite effect than that toward which we were actually striving.

In the Southwest ethnic and racial isolation is in some respects worse than in the rest of the country. In Texas and in other parts of the Southwest we have seen the maintenance of not two but of three separate school systems; one for Negroes, one for Mexican-Americans, and one for Anglos. Only by extensive reorganization of financial and political components can in-roads be made to change this to a unitary school system.

Private schools are now subsidized to a very limited degree by public monies. Their survival will depend a great deal on increased support from governmental bodies. Their abilities to integrate will likewise depend as much on the financial support of governmental bodies as on the moral leadership of their official spokesman.

Our cities enjoy and suffer from their extensive interrelatedness. To use one of Mr. Moynihan's apt phrases, "everything is connected to everything." A massive flow of federal funds to assist the public schools, which does not at the same time consider the impact on private education will have very adverse effects.

It is my suggestion that major metropolitan areas throughout the country would be best served by the creation of area-wide desegregation counselors funded by the monies provided under this Bill. These desegregation centers would invite the participants of public and private educational agencies and institutions at all levels of our operation. Such an agency would help to bring some coherence into the overall problems of desegregating the American society.

There is no current federal program which developed an effective tri-ethnic desegregation plan. This Bill should give more emphasis to the immediate implementation of such a plan.

It saddens me to admit that in recent years large numbers of our schools have had to close in precisely those areas where they were most needed and had the most to offer. On those areas in the United States where Catholic schools have been forced to close because of lack of financial support and/or a movement of parishioners to the suburbs, there now exists excellent educational facilities which could be cheaply converted to useage by the public school system. These facilities could, because of their strategic location in and near the ghetto areas of the United States, serve as excellent schools with ethnically balanced student population. This provision could be met under those activities authorized in Section 6F of the Bill.

We must face the fact that the residential patterns now existing in most of the United States are such that unless a certain degree of busing is carried out, very little can be done to achieve ethnic balance. The usage of Catholic institutions strategically located would not necessitate any busing other than that which is normally used.

In closing, I cannot too strongly urge the Committee to consider the possible impact of this Bill on the educational opportunities available to the Spanish-speaking in the United States. It should also investigate the relative impact of the *Cisneros* Decision which, while now being appealed to the Fifth Circuit Court, has ruled than the Mexican-American is a distinct ethnic group which must be included in any desegregation plan.

Evidence to date suggests that the quality of education provided Mexican-Americans might be inferior even to that which is provided for black children. When this is considered in the light of the fact that 90% of all Mexican-Americans are Catholic, the possible impact of the decision to desegregate with federal assistance is obvious.

Statement of the Rev. John M. Bond, Superintendent, Diocese of Charleston, S.C.

1. Since the spring of 1967, the diocesan system of education began its administrative relationship with the Office of Civil Rights, H.E.W. At that time data and related problems were presented to the Civil Rights' Office. Reflections were made by the Civil Rights' officials with recommendations for furthering desegregation. It should be noted that prior to this time several strong moves had been made by way of pastoral policy to implement social teachings of the Church. Realizing that the law called for more than intent, the Most Reverend Bishop of the diocese responded to the Civil Rights' Office that stringent efforts would be made to achieve de facto results. In the school year 1967–68, procedures were set up to achieve two primary purposes:

(*a*) To eliminate de facto dualism in seven situations through plans designed by committees at the local level.

(*b*) To bring about further integration both in terms of faculty and student body in these places, as well as in the other schools in the diocese.

In the course of these procedures, two personal contacts were made with the Civil Rights' Office by the Superintendent: The first to inform them of the procedures; and the second to indicate the initial results. (Plans submitted by the local committees and approved by the Bishop.) In the fall of the school year 1968–69, the Superintendent related to the Office of Civil Rights the de facto results of the plans devised for the previous spring.

Since that time, the Department of Education for the diocese of Charleston has related on a volunteer basis at least twice a year, by way of personal contact, with officials at the Civil Rights' Office in order to:

(*a*) Relate to them data pertaining to faculty-student black and white ratio.

(*b*) In relating this information to the Civil Rights' officials, the intention of the Most Reverend Bishop has been conveyed; namely, an openness to suggestions for effectively furthering the process of integration within the school system.

2. As a school system which is a non-public, private school system, not explicitly obligated by legal pressure, but respectful of the law of the land and committed to social justice, the Diocese of Charleston has both, at the policy level and at the practical level, shown its purpose in a fairly dramatic way. This could be pointed up by what follows:

FIC & PUNC

(*a*) The policies of the diocese: "In keeping with the spirit of our Christian commitment, pastors, principals, and rectors shall endeavor, not only to insure the complete and equitable integration of their faculty and student body, but also promote by positive direction the spirit of Christian brotherhood.

"No registrant may be accepted as a transfer student from the public school system where there is a verifiable attempt on the part of the student or the parents of the student to use the Catholic school at the elementary or secondary level as a haven to resist the policies of the public school system relative to desegregation.

"Again I would like to reiterate the hope that Christian initiative will bring our Catholic people a realization of living in full Christian brotherhood with all the citizens of the community. Interracial justice requires our complete acceptance of black persons as equal before God. In Catholic schools we make no distinction."

(*b*) Factually, the data on student enrollment would indicate that as a private non-public school system intentions would indicate more than a passive positive relation to integration.

Enrollment, school year 1967–68: 6,725 Whites (78% White); 1,857 Negroes (22% Negro).

Enrollment, school year 1968–69: 6,349 Whites (79% White); 1,739 Negroes (21% Negro).

A crop in enrollment both white and black in part has resulted from the stringent move to desegregate in the school year 1967–68, at which time we lost at least 450 students for the following year. The losses, from our field experience, were more related to transportation, tuition rates, etc., rather than overt reaction to integration per se.

3. In an attitudinal survey study done during the course of this past school year, the whole area of integration was studied by way of 16,000 questionnaires given out to all people involved in the diocesan system of elementary education. In the 65% return, two positive points were quite apparent:

(*a*) A significant high majority responded positively to the question: "Do you feel that integration is necessary in your school?"

(*b*) A further positive point was the indication that through student experiences in an integrated school emotional, unhealthy attitudes would be avoided and positive training would be provided. This point is backed up by the value system training offered in our schools and is evident in the almost complete absence of problems in our schools where integration has been increased.

It should be noted here that one very positive value we feel we have to offer is introduction in our schools to both black and white students which provides an atittude in which a socially oriented value system can be effectively communicated to the child both at the academic and experimental level. The whole atmosphere of a Catholic school provides a Christian context in which both students and parents can be attitudinally changed so that proper social behavior patterns will result.

4. The recent efforts by the Diocese of Charleston in regard to integration relate to the establishment of the Diocesan Interracial Commission. One of the charges of this Commission is to re-evaluate the efforts that have been made in the past for policies applicable in the present, the situation as it exists today, with the purpose in mind of effecting integration in the parishes as well as in the schools.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, D.C., August 10, 1970.

MR. STEPHEN J. WEXLER,
In care of Senator CLAIBORNE PELL,
Old Senate Office Building,
Washington, D.C.

DEAR STEVE: Here is the Leadership Conference on Civil Rights' consensus on Emergency School Aid. If you want to include it in the record of the hearings, by all means to do. Perhaps, a brief introduction is necessary. If you think so, call me and we can discuss that.

Regards,

MARVIN CAPLAN,
Director, Washington Office.

THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS CONSENSUS ON EMERGENCY SCHOOL AID FUNDS

The consensus arrived at by the Leadership Conference on Civil Rights at its meeting on Monday, June 2, as modified at its meeting on Friday, July 17, concerning the Administration's program for additional funds for school desegregation is as follows:

1. The Leadership Conference supports the concept of adequate Federal funds to promote school desegregation. This has been its position since 1958 when it supported such a concept in a bill, introduced by Senator Paul Douglas and others, which ultimately became Title IV of the 1964 Civil Rights Act. We note that since then, appropriate use of Title IV of the 1964 law has not been made.

2. The Leadership Conference supported the "Mondale-Javits Amendments" as the minimum necessary to help assure the proper use of the school desegregation funds contained in the Education Appropriation Bill for fiscal 1971. We shall carefully observe the use to which these funds are put in determining our course with respect to the $1,500,000,000 Emergency School Aid Act of 1970 (S. 3883).

3. Some of the constituent organizations of the Leadership Conference are already on record in support of the President's bill with appropriate amendments, while others feel drastic revision of the bill is required. However, the Leadership Conference as a whole will support additional funds for school desegregation (i) such funds do not come out of programs for the poor and other social programs; and (ii)such funds are spent for programs that will in fact promote desegregation.

4. Whether S. 3883 and its House counterpart should be partially revised or totally revamped, what sums should be authorized for school desegregation purposes, and the exact programs that Congress should specify, are under study by the Leadership Conference and its constitutent organizations. It is hoped that at some future time a more precise consensus can be arrived at on the basis of such study and the experience with the funds appropriated in the Education Appropriations Bill.

STATEMENT OF WALTER G. DAVIS, DIRECTOR, DEPARTMENT OF EDUCATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ON S. 3883, THE EMERGENCY SCHOOL AID ACT OF 1970, BEFORE THE SENATE SUBCOMMITTEE ON EDUCATION OF THE LABOR AND PUBLIC WELFARE COMMITTEE

August 7, 1970

Mr. Chairman, we are pleased to have the opportunity to share our views with this Subcommittee concerning the Emergency School Aid Act of 1970, S. 3883. This bill deals with matters of long and deep concern to the AFL-CIO.

The bill addresses itself to three types of situations. Regarding each of these situations, the AFL-CIO has forthrightly committed itself.

First, S. 3883 would provide financial assistance "to aid local educational agencies throughout the Nation to meet the special needs incident to the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools."

The AFL-CIO was founded by the merging of the American Federation of Labor and the Congress of Industrial Organizations in 1955, the year after the Supreme Court declared that schools segregated on the basis of race are unconstitutional. That founding convention was very busy establishing the structure and principles of the new organization. Yet it took out the time to adopt a resolution which declared:

> The AFL-CIO is committed to the basic principle of affording the educational opportunities to all persons regardless of race, creed or status. It is, therefore, strongly committed to help assure the fullest possible support for the implementation of the Supreme Court decision in outlawing segregation in the nation's schools.

We therefore firmly endorse the first declared objective of the bill.

Secondly, S. 3883 would provide financial assistance "to encourage the voluntary elimination, reduction, or prevention of racial isolation in schools with substantial proportions of minority group students..."

Again, this is a goal with which the AFL-CIO has long been in accord. In its convention of 1963, the AFL-CIO declared flatly, "_De facto_ segregation is no more morally defensible than segregation arising out of the law." The next convention of the AFL-CIO, meeting in 1965, stated:

> De facto segregation arising from neighborhood housing patterns and from the location of schools remains a serious problem.../We urge/ positive efforts to ensure that the schools will be meeting places for children of different races, different nationality backgrounds, and different levels of family income.

Finally, the bill would provide financial assistance "to aid children in elementary and secondary schools to overcome the educational disadvantages of racial isolation..."

Here too the AFL-CIO has declared itself, this time in its convention of 1967 which stated:

> Where ghetto schools are an inevitable consequence of urban housing patterns, then massive resources must be poured into those schools to compensate for the educational handicap which stems from the very fact that they are ghetto schools.

With the stated purposes of the Emergency School Aid Act then the AFL-CIO is thoroughly in accord.

We are nevertheless apprehensive that S. 3883 in its present form could very well result in delaying rather than speeding school integration. We are convinced that the bill requires drastic revisions. Unless such changes are made, we would be constrained to oppose it.

We are particularly concerned about Section 4-c of the bill which provides, in the allocation of funds, for a school district to double count its minority children if it is carrying out a plan of desegregation pursuant to a final order of a United States court issued within a period less than two years prior to the year in which the allotment is to be made or if it is desegregating under a plan meeting the requirements of Title VI of the Civil Rights Act of 1964.

This provision would reward recalcitrance. States with school systems which had defied the Supreme Court decision of 1954 until forced to desegregate by federal courts or the Department of Health, Education and Welfare under Title VI would qualify for more assistance under S. 3883 than they would if such districts had voluntarily obeyed the law. Surely it is a novel concept to provide greater federal assistance to those who have violated the law than to those who have lived up to the law.

By limiting the double count to school districts which are under federal court orders or Title VI plans, Section 4-c makes an arbitrary and pointless distinction between school districts such as Charlotte, North Carolina, which is under a federal court order to desegregate and Los Angeles which is under a state court order. The section would penalize states with school systems which have demonstrated their initiative by integrating their schools voluntarily and states with racial balancing laws or policies.

Section 4-c amounts to a bonus from the federal government to those who stubbornly defied the Supreme Court for over 16 years. The double count provision should be eliminated if this bill is truly to serve equitably the purpose of school integration.

We are concerned also about Section 5-a(3) which provides for "interracial educational programs or projects involving the joint participation of minority group and nonminority group children attending different schools." Now we thoroughly agree that in a situation such as that here in Washington, D. C., where meaningful racial integration may be difficult at this time, there is a need for special efforts to compensate for racial isolation. What we find wrong in this section is not its intent but the terms under which a school district may qualify. To qualify, the racially isolated schools must be in a district in which "the number of minority group children in average daily membership in the public schools ... is (A) at least ten thousand or (B) more than 50 per centum of such average daily membership of all children in such schools."

If 10,000 minority children are sufficient for a school district to qualify, then there must be a few large cities in America which could not argue that racially isolated schools were inevitable and that they sould use their Emergency School Aid funds not to establish integrated schools but instead to develop projects attempting to overcome the educational disadvantages of keeping them segregated.

This provision of the bill, like Section 4-c, could have the effect of frustrating efforts at integration rather than encouraging them. We are concerned that applications from school districts would be received with great tolerance where they proposed to use funds to compensate for racially isolated schools.

When the Charlotte-Mecklenburg school board appealed the decree of Federal District Judge James B. McMillan, the Justice Department entered into the appeal as a "friend of the court," arguing that all schools in a unitary district need not be integrated. There are thus reasons to suspect that proposals to use these federal funds not on integration plans but on "projects to overcome the adverse educational effects of racial isolation" might receive favorable consideration from those administering the Act. We therefore believe that Section 5-a(3) should be amended to change the eligibility criteria.

We urge that the legislation make more positive efforts to encourage school systems to seek ways of overcoming racial isolation. In its 1967 convention, the AFL-CIO stated:

> School systems need to experiment with new patterns of organization which hold promise in breaking down de facto school segregation. Educational parks, supplemental learning centers, and magnet schools are among the proposals which have been advanced to bring about maximum racial and economic integration and at the same time facilitate quality education by permitting the fullest use of educational technology.

We suggest that a section be included in the Emergency School Aid Act earmarking funds for demonstration projects of this sort, particularly funding for an educational park or two. The experience gained through this type of project might well be applied throughout the nation and lead to the solution of long-standing problems of racial isolation plaguing many of our urban areas.

Mr. Chairman, we assume good faith on the part of all officials -- federal, state and local -- involved in the desegregation process. Unfortunately, experience has taught us that good intentions -- however deeply held -- often are not enough. And, sometimes, well-intentioned local officials are subjected to unbearable political pressures in the absence of clear federal mandates. For these reasons, we believe this Subcommittee should be careful to outline as specifically as possible the purposes for which funds authorized under the bill may be spent. We are disturbed, for example, about the broad grant of discretionary authority placed in the hands of the Secretary of Health, Education and Welfare in Section 4(a). One-third of the funds authorized may be expended -- in the words of the bill -- "as he may find necessary or appropriate for grants or contracts to carry out the purposes of this Act." We submit, Mr. Chairman, that this language should be tightened up.

Just as S. 3883 would place what we believe would be too much discretion in the hands of the Secretary of HEW, its language would leave too much to the discretion of local school officials who, in some cases, have been in violation of the law and who reportedly have seriously misused ESEA Title I funds. We do not believe that the bill makes sufficiently clear the procedures which will be followed in assessing compliance by a school system with the terms of its desegregation project once it has been approved by the Secretary.

In light of our concerns about the implicit discretion envisioned in the Administration bill, Mr. Chairman, we should like to make a couple of suggestions. We believe that the bill should require the Department to spell out some standard of progress against which to measure the implementation of a school system's integration plan. Interested persons outside of government should be aware of the criteria which will be used in judging a proposal and how it will be monitored and reviewed. Similarly, local school officials should know the criteria by which the Department will measure applications for assistance and how they will be reviewed for compliance with the provisions of the applications.

These concerns lead us to the conclusion that the Office for Civil Rights, the Title VI compliance agency for HEW, should be intimately involved in the compliance review process and in approving applications for aid. S. 3883, would place the administration of the program it authorizes in the Office of the Secretary. The involvement of the Office for Civil Rights would not be inconsistent with this since that agency is located in the Office of the Secretary. The Office for Civil Rights is more familiar with school desegregation compliance than any agency in the federal government. We believe strongly that the Secretary of HEW should draw extensively upon this resource in administering the new law. Compliance under S. 3883 will be of prime importance if the purposes of the Act are to be served. We believe this subcommittee should consider legislative language or a strong recommendation in its report to the effect that the Office for Civil Rights should be responsible wholly or in part for the administration of the program authorized by S. 3883.

We are concerned about the absence of any provision in the bill requiring public disclosure or the formation of local multiracial community advisory committees to consult on the types of programs to be funded, developed and implemented. Nothing in the Act requires a school board to reveal to the community the uses to which it is putting its funds. Only in the case of projects designed to compensate for racial isolation is a school system even required to show that funds under the Act are resulting in an increased per pupil expenditure.

Experience teaches us that if a program of this sort is to work, it must be closely monitored, both by the federal government and by the community in which it takes place. This bill does not adequately provide for either.

We recommend, Mr. Chairman, that the Subcommittee consider inclusion of a a requirement for community participation -- on a multiracial basis -- in the development and implementation of projects funded under this Act. Since the purpose of the Act is to promote school integration, we believe it is altogether appropriate to suggest that there also be multiracial involvement of students either on the community committees or on separate committees to be consulted in planning for school desegregation. We know this Subcommittee has heard testimony about the kinds of activities considered important by youngsters going through the integration process. Without their involvement, integration can be needlessly impeded by oversights and insensitive decisions.

Mr. Chairman, we have no intention of submitting to this subcommittee a "laundry list" of the types of activities which we believe could be eligible for assistance under legislation such as that which you are considering. The fact is that we are really groping for answers in school integration. The answer in one community is not necessarily the answer in another. What works here will not always work there. For that reason, flexibility is essential. We believe Congress should enact a bill containing as many of the various tools as possible needed to bring about school integration -- not just desegregation, in the sense that that term may meet minimum legal requirements -- but true integrated quality education.

The bill should, as we suggested, authorize a demonstration section on educational parks. It should also assist other integration tools, some of which are mentioned in the bill--reduction of teacher-pupil ratios, training and retraining of teachers, development of new teaching techniques and teaching materials reflecting more accurately the great contributions of minorities to our history and culture, hiring of community aides and teacher aides, assistance for transportation costs, expert consultation on reorganizations of grade structures of schools or school pairings to facilitate desegregation and the many other, diverse activities which can be used to promote integration and in so doing help to bring about a better quality of education.

The provisos, which the Senate added to the school desegregation assistance item in the fiscal 1971 education appropriations measure (H. R. 16916) represent examples of the kind of safeguards needed to assure that funds authorized by legislation such as S. 3883 would be expended for the purposes intended. But more is needed in the way of safeguards spelled out in Departmental regulations and perhaps enumerated in the committee report. Experience under the Title VI school desegregation program as well as the Title I ESEA program has shown that regulations must be specific and explicit or they will not be effective. Unless such regulations are promulgated and strictly enforced by the Administration, we are fearful funds authorized by this Act may be spent for purposes which might have the effect of retarding rather than promoting school integration.

We believe the experience gained in allocating, spending and monitoring the $75 million appropriated as part of the fiscal 1971 education appropriations bill will provide an opportunity to ascertain more definitely the kind of safeguards which will be needed to assure the funds authorized by S. 3883 are properly spent.

We have one additional concern about this bill, Mr. Chairman. Where does the Administration plan to obtain the $1.5 billion it has pledged for this program? The members of this committee are well aware of the gap between authorizations and appropriations for education programs. You are, likewise, aware of the President's veto of one appropriation bill because of the education funding levels and the threatened veto of this year's education appropriation bill.

The AFL-CIO would hope that this $1.5 billion would be "new" money -- not funds diverted from other social programs. Further, we do not want to see a new program enacted that will end up competing with other under-funded -- and equally needed -- education legislation.

Mr. Chairman, as we stated at the outset of this testimony, the AFL-CIO has long been deeply concerned about the segregation, discrimination and racial isolation which exist in the school systems of America. Such conditions are depriving American youngsters of the right to an equal educational opportunity, and they cannot be tolerated. The nation has moved a long way since the Supreme Court held that separate schools are inherently unequal; we have a long way to go. We see this bill -- if properly amended to assure that its objectives will be achieved -- as a vehicle for accelerating our progress along the road leading toward true equal educational opportunity, a goal which still eludes us some 16 years after the Supreme Court pointed the way in 1954.

PREPARED STATEMENT OF THE AFL-CIO EXECUTIVE COUNCIL ON THE EMERGENCY SCHOOL AID ACT, AUGUST 3, 1970, CHICAGO, ILL.

Nowhere has the Nixon Administration's equivocal attitude toward education been more nakedly revealed than in the Emergency School Aid Act which it has submitted to Congress ostensibly to facilitate the process of school desegregation.

The AFL-CIO has never wavered in its support for school desegregation. The founding convention of the AFL-CIO expressed its support for the Supreme Court decision of 1954 which outlawed segregation in the nation's schools. In 1963, the AFL-CIO extended its concern to declare that "*de facto* segregation is no more morally defensible than segregation arising out of the law."

With the stated purposes of the Emergency School Aid Act then the AFL-CIO is thoroughly in accord. We are nevertheless convinced that in its present form the bill could very well result in delaying rather than speeding, school segregation.

We are particularly concerned that the bill provides, in the allocation of funds, for a school district to double count its minority children and thereby presumably qualify for additional funds if it is carrying out a plan of desegregation pursuant to a final order of a United States court or if it is desegregating under requirements of Title VI of the Civil Rights Act.

This provision rewards lawlessness and recalcitrance. States with school systems which continue their defiance of the Supreme Court decision of 1954 until they are forced by federal court order or the Department of Health, Education and Welfare to desegregate, would receive a disproportionate share of the funds.

The Administration bill further compounds the injustice by making the double count provision retroactive for two years. If there were any justification for bonus funding, it would be in the case of those school districts which began early with the process of desegregation, either as a result of court action or as a voluntary matter. However, we would urge the elimination of the double count altogether.

We are further concerned about that portion of the bill which provides for "interracial educational programs or projects involving the joint participation of minority group and non-minority group children attending different schools." We thoroughly agree that in a situation where meaningful integration is altogether impractical, there is a need for special efforts to compensate for the racial isolation. What we find wrong with this section of the Administration's bill is not its intent, but the terms under which a school district may qualify. Under the present language of the bill, any school district having as few as 10,000 children could argue that racially isolated schools were unavoidable and that they should use their Emergency School Aid funds not to establish integrated schools but instead to develop projects to overcome the educational disadvantages of their being segregated. Few cities in America would be unable to qualify under this criterion.

This provision of the bill, like the double count provision, appears to be designed to frustrate efforts at desegregation rather than to encourage them.

In general, the bill leaves far too much in the hands of local school officials who, in many cases, have defied the law and who reportedly have already seriously misused funds appropriated under the Elementary and Secondary Education Act. The bill also gives far too much discretion to the Secretary of Health, Education, and Welfare, leaving one-third of the funds to be distributed as he sees fit. Experience teaches us that if a program of this sort is to work, it must be closely monitored, both by the federal government and by the community in which it takes place. This bill does not adequately provide for either of these.

We urge the Congress to make the substantial changes in the Emergency School Aid Act which would fulfill the bill's stated purposes. Those purposes we fully support and we urge positive action by Congress to bring them about.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., July 2, 1970.

Hon. CLAIBORNE PELL,
Chairman, Senate Subcommittee on Education, U.S. Senate, Washington, D.C.

DEAR CLAIBORNE: I am sending you copy of a statement made by Mrs. J. D. Hagler in behalf of the Maxton City Board of Education on H.R. 17846. I would certainly appreciate it if you would print Mrs. Hagler's statement in the Senate hearings on this subject.

With kindest regard, I am
Sincerely yours,

SAM J. ERVIN, Jr.

Enclosure.

PREPARED STATEMENT OF MRS. J. D. HAGLER ON BEHALF OF THE MAXTON CITY BOARD OF EDUCATION, MAXTON, N.C.

Mr. Chairman and members of the Subcommittee on Education, I appreciate the opportunity to appear before you today in the interest of House Bill No. 17846 and to urge you to do everything possible to expedite passage of this vital and much-needed legislation. I represent an area which by tradition has been proud of its quality of education. Much of our community life is centered in the life of our schools.

Today in Maxton, North Carolina, we are confronted with educational problems which could be solved in a large measure by passage of this proposed legislation. When I read President Nixon's policy statement on March 24th and his message to Congress on May 21st, I felt that he surely must have had Maxton in mind. Maxton is a small community located in Robeson County in southeastern North Carolina. Our town is situated halfway between two large cities, Charlotte and Wilmington. For many years, agriculture has been the main source of income for the majority of our people.

According to the 1960 census, the Maxton Township population was 5,204, with 1,757 persons living in the corporate town limits. Of 1,523 children, a total of 1,288 were economically deprived. The Maxton School District serves the entire Township.

For the 1970–71 school term, the Maxton City Schools will have an enrollment of 1,630 students. A racial breakdown of this figure is as follows:

	Black	Indian	White	Total
Elementary 1 to 8	543	341	269	1,153
High school 9 to 12	216	121	140	477
Total	759	462	409	1,630

Our most critical problem this past school year was housing. In May 1969, a ten-classroom high school building was totally destroyed by fire. Following the fire, eight temporary wooden structures were erected adjacent to the remaining nearly 50-year old high school building to serve as academic classrooms. During the past school term, restroom facilities, hallways, and a cafeteria designed for 250 students, were greatly overtaxed by the 450 students which they had to accommodate. The school system in Maxton is financed as follows:

Current Expense Budget: State—85%; Local—8%; Federal—7%.

For the 1970–71 school year, our schools will be completely integrated, according to a plan submitted and approved by the Department of Health, Education, and Welfare. All grades 1–12 and all faculties will be racially mixed. One of the recent requirements of HEW is that no student living within the Maxton Township boundary lines may attend school in Robeson County or vice versa. As a result of this ruling, we will have approximately 200 additional students for which to provide housing this fall.

Most of these additional students are Lumbee Indians, who are justifiably proud of their racial background. They have attended segregated schools provided by the county system for many years. Needless to say, they are reluctant to leave these schools and are resentful of announced plans for forced integration.

One of the results of our problems with desegregation and with totally inadequate facilities is a loss of experienced personnel. Several of our teachers have resigned this spring, giving as their reason the desire to teach in schools with better facilities than we have.

The most pressing problem in our community today is that of adequate housing for our present and expected enrollment. First of all, our foremost need is for a new high school building designed for educational effectiveness for all of our students. In addition, we need funds to carry out some necessary improvements to existing facilities in order to upgrade them for new programs of learning which we hope to be able to provide for the very best education for every child who attends school in Maxton.

We need to expand and improve our curriculum, as well as our methods of teaching. This would include offering more occupational courses of study for our high school students. In recent years, several nationally-known industrial firms have located plants in this area. These new plants have provided many new job opportunities for our young people.

Federal funds for occupational courses are available on a matching basis. However, a small unit such as our does not have the money necessary to meet the requirements for these funds. We would very much like to be able to provide additional occupational programs to enable our high school graduates to become successful in life, whether they attend college, technical school, or enter the business world, without continuing their higher education.

Another vital need is that of more specialty teachers on the elementary level. As knowledge increases, and I believe the rate at the present time is that all knowledge doubles every eight to ten years, we cannot expect our teachers to keep up with this increased knowledge and deal with desegregation problems all at the same time. We need special teachers in subject matter areas to give assistance to our elementary, as well as our high school teachers.

In September of this year, we are planning to implement a new program of team teaching in grades one through six. This new method of teaching is one that requires much planning on the part of the teachers involved. It is most difficult for teachers to function in the classroom all day and then have to spend additional time in planning the next day's work, plus evaluating the one just completed. We need specialty teachers and semi-professional personnel to free the classroom teachers so they can spend more time on the important matter of education.

Equipment, teaching aids, and instructional materials to help our teachers present information in a better and more effective way are other needs facing our school personnel at this time.

The area of guidance and counseling is one of utmost importance in the process of desegregation of our schools. Students in a desegregated school find themselves in situations that cause frustration, anger, resentment, suspicion, and other personal and distressing emotions. Much of the time these students do not understand what really makes them feel as they do and often they have no valid reason for the above mentioned emotions.

In our district, we have barely scratched the surface of guidance and testing programs. We need to go further in this area, but our real need is for counselors who can understand and relate to students of all races in such a way as to ease tensions in the individual student. This counseling should be comprehensive and should include counseling with parents and guardians, so they can understand the problems of their children who are trying to learn in a desegregated environment.

Salary supplements for our local unit are also needed in order to attract and hold top grade experienced teachers. Within the combined school systems under desegregation plans, the number of supervisory and administrative positions is often decreased. This means that many capable people are left without employment or else they must take a salary cut in a lower paying position. I would like to see a provision in this bill whereby local school boards could supplement salaries in order to maintain former pay scales and thereby retain the valuable services of many experienced individuals.

As we are able to secure new and more sophisticated buildings and additional equipment, we will need to improve our maintenance and janitorial services with salaries that will attract and hold personnel who are trained to provide these services. With jobs available elsewhere at higher wages, it has been practically impossible to keep competent maintenance and janitorial help. If funds were available, these workers would not be enticed by similar higher paying positions after having been trained. Another area of concern is that of providing co-curricular activities for our students. In a small high school like ours, these activities consume a great deal of the teacher's valuable time. This time is needed in adjusting to an integrated situation, in trying to plan so that each student will be reached in the learning process, and in striving to improve techniques for the slow learners. This means that their time is taxed to the limit. Here we find one of the many areas where the employment of a teacher's aid or some semi-professional could be used to allow teachers to devote more time to actual teaching.

In addition, we need funds to support these co-curricular activities. At the present time, there are no funds to finance such programs other than fees charged to students, as members of a particular organization or activity, and in the case of the athletic program where entrance fees are charged to students and adults.

Funds for In-Service Training are also needed in a serious effort to offer additional educational opportunities for our teachers and other personnel. These courses would be offered to improve the effectiveness of our instructional staff. If we are to offer better education for our boys and girls, we must provide for our teachers to increase their knowledge.

Passage of this bill would aid many schools which face the same problems caused by desegregation that Maxton is wrestling with right now. This appeal is being made to your Committee in the hopes that some of our many needs and those of other school districts may be met in order to carry out desegregation more expediently and more effectively.

In Maxton, our greatest need is for a new high school building. I sincerely hope that you will recommend that the funds to be made available by this proposed legislation be spent for permanent construction. Elsewhere in my presentation, I have tried to give our problems in regard to facilities. No program to improve a learning situation in our schools can be effective without facilities to carry out that program or those enumerated by the President. There is no point in having a plan to improve instruction and curriculum unless there is first an adequate building in which to carry out these plans. Permanent construction is our first and foremost need.

In addition to improving the teaching situation and offering space for expanded areas of learning, money spent on permanent construction can be witnessed by the entire community as tangible evidence of improved educational efforts and would arouse a feeling of pride and cooperation on the part of all three races.

I sincerely hope that your Committee can propose that this legislation give the local school board the privilege and responsibility of spending this money as it best fits the need of its community. It is imperative that this money, especially the Emergency School Aid Act fund, be made available to local units in the shortest time possible, with a minimum of restrictions and time-consuming red tape. There is a dire need for this money and the need is not tomorrow, it is now.

It is important that this money come directly to the local unit. Sometimes when money is appropriated by Congress, it has to go through a number of departments and each agency places its own interpretation on what Congress meant. By the time it gets to the local unit, it is neither what Congress intended, nor does it fit the local need.

Local school board members and superintendents have lived with and will continue to live with these problems caused or accentuated by desegregation. I strongly recommend that their knowledge and experience be called upon to help draw up the guidelines used to implement this bill.

If we are given the privilege of spending this money, we will gladly accept the responsibility for spending it wisely. While our needs in solving the problems caused by desegregation in our district may have something in common with other school districts, our method of meeting these needs may and should be different from those of other districts.

We have asked our architect, Reginald McVicker, of the firm of Jordan, Snowdon and McVicker, to prepare a statement concerning the building program we need to solve our problems. This is included in the printed copies of this testimony and I would like to ask that you give it consideration in your deliberations. There are also included photographs of our present high school site, showing the old building and the temporary wooden structures. You will see from these photographs our dire need for permanent construction.

In closing, I would like to quote what President Nixon said in his Message to Congress last month:

"The tensions and difficulties of a time of great social change require us to take actions that move beyond the daily debate. This legislation is a first major step in that essential direction.

The education of each of our children affects us all. Time lost in the educational process may never be recovered. I urge that this measure be enacted on speedily, because the needs to which it is addressed are uniquely and compellingly needs of the present moment."

I would like to thank this committee most sincerely for allowing me to appear before you in behalf of the National School Board Association and the State School Board Association of North Carolina.

JORDAN, SNOWDEN & MCVICKER,
ARCHITECTS ENGINEERS,
Laurinburg, N.C., June 9, 1970.

Re Building Program, Maxton City Schools.

Mr. DAVID M. SINGLEY,
Superintendent, Maxton City Schools,
Maxton, N.C.

DEAR MR. SINGLEY: Having completed a Preliminary Study of the proposed facility requirements for the Maxton City School System we are enclosing a copy of a proposed budget for your consideration.

These cost projections are based on current construction market conditions and are presented in a comprehensive budgeting format similar to the Engineering Data Supplement used by the Department of Housing and Urban Development.

If you need more information, please contact us at anytime.

Yours very truly,

J. REGINALD MCVICKER, Jr., AIA.

Enclosure.

FACILITIES SURVEY—MAXTON CITY SCHOOLS, HIGH SCHOOL BUILDING

[Enrollment 1970-71, 477]

Classrooms	Permanent	Temporary	Mobile
Academic	6	10	
Business education	1		
Science	1		
Special education	½		
Total	8½	10	0

Food service: Dining area.—1,025 sq. ft. Recommended seating per shift—100. Use=enrollment × .80; 477+272=749 × .80=600=six shifts. Increases in the Junior High or High School level usage will result in seven shift, 2½ to 3 hours, serving operation.

Science Classroom.—938 sq. ft. Recommended student load—30=150 students per five period day=enrollment accommodation of 31.5% for Science Lab facilities.

Library.—1,322 sq. ft. Seating accomodation, 30. Recommended for High School Enrollment, 477=75 seats. Recommended for Combined Enrollment, 749=90 seats.

Administration.—570 sq. ft. Present staff, 7. Recommended area, 1,400 sq. ft.

Sanitary Facilities.—Enrollment, 477.

	Present	Minimum N.C. Plumbing Code
Boys:		
Water closets	10	4
Urinals	4	8
Lavatories	4	5
Girls:		
Water closets	10	6
Lavatories	4	5

Physical plant.—2 Story—25,906 sq. ft. Built 1924, consists of exterior masonry walls, wood framing for roof, walls and floors. Would be presently classed as type V ordinary construction, type C occupancy. Existing building exceeds present N. C. Building Code allowable area for type V ordinary construction by 250%.

1. Present allowable area, 2 story=10,000 sq. ft.
2. Required Exit stairs are of wood construction and in violation of N. C. Code Sect. 115.7, requiring that smoke tower *and* stairs be of noncombustible material.

Part I.—New high school program

	Square feet
A. Space requirements:	
Classrooms:	
14 Academic @ 768; 2 science @ 1,152; 2 special use @ 576	14, 208
Vocational training, career skills: Shops, storage, classrooms (2)	4, 032
Library, resource center: 12,000 volumes, 75 seats	3, 700
Multipurpose area: Dining, physical education, group assembly	4, 600
Administration: Offices, health room, teacher's lounge, storage	1,536
Total assigned area	28, 076
Unassigned area: Mechanical equipment, toilets, lockers, dressing, general storage, circulation, covered walks	9, 960
Total project area	38, 036

Part I.—Elementary program (R. B. Dean school)

	Square feet
A. Space requirements: Classrooms, 8 @ 1,000; total assigned area	8, 000
B. Total project area:	
High school program	38, 036
Elementary program	8, 000
Total	46, 036

PART II—TOTAL PROJECT COST ESTIMATE

	High school	R. B. Dean
		0
A. Building	$685, 000	$144, 000
Site improvements	15, 000	5, 000
Utilities	12, 000	2, 000
Contingency, 5 percent	35, 600	7, 50
Movable equipment	70, 000	15, 000
Total	817, 600	173, 500
B. Architectural/engineering services:		
Fees	55, 600	14, 400
Surveys, borings, tests	2, 000	500
Total	57, 600	14, 900
C. Project administration:		
Legal and administration	13, 700	6, 900
Interest during construction	53, 300	7, 500
Government field expense	8, 000	4, 000
Contingency, 5 percent	47, 500	10, 300
D. Total project cost	997, 700	217, 100

Part III—Land acquisition

50 acres recommended, land, legal fees, contingency	$60, 000

Part IV.—Summary

High school program	$997, 700
Land	60, 000
Total	1, 067, 700
R. B. Dean Addition	217, 100
Total program budget	1, 284, 800

JAMES O. EASTLAND, MISS., CHAIRMAN
JOHN L. MC CLELLAN, ARK.
SAM J. ERVIN, JR., N.C.
THOMAS J. DODD, CONN.
PHILIP A. HART, MICH.
EDWARD M. KENNEDY, MASS.
BIRCH BAYH, IND.
QUENTIN N. BURDICK, N. DAK.
JOSEPH D. TYDINGS, MD.
ROBERT C. BYRD, W. VA.
ROMAN L. HRUSKA, NEBR.
HIRAM L. FONG, HAWAII
HUGH SCOTT, PA.
STROM THURMOND, S.C.
MARLOW W. COOK, KY.
CHARLES MC C. MATHIAS, JR., MD.
ROBERT P. GRIFFIN, MICH.

JOHN H. HOLLOMAN III
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

June 10, 1970

Honorable Claiborne Pell
Chairman
Senate Subcommittee on Education
United States Senate
Washington, D. C.

Dear Claiborne:

I understand that the Senate Subcommittee on Education is holding hearings on S. 3883, the Emergency School Aid Act of 1970.

I have received a letter from the Superintendent of the Robeson County schools in North Carolina. Because of its large percentage of Indian children, Robeson County occupies a very unique position with regard to desegregation of its black and white public schools. Therefore, because of his great experience in dealing with these difficult problems, I feel that Superintendent Allen is well qualified to give advice to the Subcommittee on S. 3883. I would appreciate it if you would print his letter in the hearing record. Additionally, I feel that he would be a very useful witness for the Subcommittee if there is time available. If not, I shall ask Mr. Allen to submit an additional detailed statement for your hearing record.

With kindest regards, I am

Sincerely yours,

Sam

Sam J. Ervin, Jr.

SJE:rsp
Enclosure

W. K. CULBRETH, CHAIRMAN
ROUTE 4, LUMBERTON, N. C.

J. G. SESSOMS, VICE-CHM.
ROUTE 5, LUMBERTON, N. C.
STEVEN STONE
ROUTE 1, ORRUM, N. C.
HARRY WEST LOCKLEAR
PEMBROKE, N. C.

Robeson County Board of Education

Y. H. ALLEN, COUNTY SUPERINTENDENT
LUMBERTON, NORTH CAROLINA
ZIP CODE 28358

I. J. WILLIAMS
REX, N. C.
W. ALBERT McCORMICK, JR.
ROWLAND, N. C.
THURMAN ANDERSON
ROWLAND, N. C.

June 3, 1970

RECEIVED
JUN 5 1970
WASHINGTON, D. C.

The Honorable Sam J. Ervin, Jr.
United States Senate
Washington, D. C.

Dear Senator Ervin:

There is now a matter before Congress in which we are tremendously interested, and that is the request made by the President for funds to aid school districts finding themselves in extremely difficult positions in desegregation. I believe that the President's message is recorded in Document 91-341 from a message sent to Congress on May 21, 1970, and is under consideration by committee this week.

As we have stated in previous correspondence, we believe that Robeson County, with its unique desegregation problems, could match any county in the nation as to needs in solving our desegregation problems. Then we would like to state that we certainly hope that this money could be used realistically in aiding school districts in desegregation at the local level. I believe that the only realistic and tangible aid at the grass roots level that we can see is for us to be able to show to all people involved under our desegregation program that there will be some tangible advantages and not all disadvantages, this meaning that where better and improved facilities are needed, these funds should be allowed to be spent for new or improved facilities, such as classrooms, shops, laboratories, etc., and also for programs for school systems which have not been able to have them during their period of segregation. For example, where schools have not been able to have a good vocational program, one hundred percent aid in the establishment of such a program would be realistic help, or in the extra-curricular areas, where schools have not been able to have bands or music, then one hundred percent aid to allow these schools to have some of these extras in the desegregated situation would be realistic and tangible aid, or possibly extra teachers to reduce teacher load. These are only examples that I might mention.

We certainly hope that if any of these moneys can be made available, they will not become bogged down through some requirement for innovative sociological experiments, as what might be innovative in one school system is established policy in another. We also feel that these funds should be made in the form of some kind of direct grant to eliminate as much middleman bureaucratic red tape as possible from both the federal and state levels. Many federal funds now are so tied up with rules and regulations and various offices to get through, not only at the federal but also at the state level, that it is discouraging to attempt to get said funds.

We certainly want to express again our tremendous interest in these funds and make the above suggestions only from our thinking in the field.

With kindest personal regards.

Sincerely,

Y. H. Allen

Y. H. Allen,
County Superintendent

YHA:ewm

P. S. We would be happy to appear in Washington before you or any group to explain our need for these funds and our position, as stated above.

Y. H. A.

RICHARD B. RUSSELL, GA., CHAIRMAN
ALLEN J. ELLENDER, LA.
JOHN L. MCCLELLAN, ARK.
WARREN G. MAGNUSON, WASH.
SPESSARD L. HOLLAND, FLA.
JOHN C. STENNIS, MISS.
JOHN O. PASTORE, R.I.
ALAN BIBLE, NEV.
ROBERT C. BYRD, W. VA.
GALE W. MC GEE, WYO.
MIKE MANSFIELD, MONT.
WILLIAM PROXMIRE, WIS.
RALPH YARBOROUGH, TEX.
JOSEPH M. MONTOYA, N. MEX.
MILTON R. YOUNG, N. DAK.
KARL E. MUNDT, S. DAK.
MARGARET CHASE SMITH, MAINE
ROMAN L. HRUSKA, NEBR.
GORDON ALLOTT, COLO.
NORRIS COTTON, N.H.
CLIFFORD P. CASE, N.J.
HIRAM L. FONG, HAWAII
J. CALEB BOGGS, DEL.
JAMES B. PEARSON, KANS.
THOMAS J. SCOTT, CHIEF CLERK
WM. W. WOODRUFF, COUNSEL

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

June 9, 1970

Honorable Claiborne Pell
Chairman
Subcommittee on Education
Senate Labor and Public Welfare Committee
Washington, D. C.

My dear Senator:

I am sending you herewith copy of a letter dated June 4 that I have received from the Commissioner of Education in the State of Florida, Honorable Floyd T. Christian, relative to S. 3883, known as the "Emergency School Aid Act of 1970", which I am sure you will find self explanatory.

I should appreciate greatly your consideration of the recommendations made in Mr. Christian's letter relative to amending this legislation. Your advising me of any final action taken on his suggestions will also be appreciated.

Thanking you, and with kindest regards, I remain

Yours faithfully,

Spessard L Holland

SPESSARD L. HOLLAND

SLH/m
Encl.

OYD T. CHRISTIAN
COMMISSIONER

STATE OF FLORIDA
DEPARTMENT OF EDUCATION
TALLAHASSEE 32304

June 4, 1970

Honorable Spessard L. Holland
Senate Office Building
Room 421
Washington, D. C.

Dear Senator Holland:

I have been furnished a copy of a bill recently introduced in Congress entitled, ''Emergency Educational Assistance Act of 1970.'' I am wholeheartedly in sympathy with the purposes to be served by this legislation, but, I have a concern on some of the provisions which I feel would be detrimental to our efforts in Florida unless the bill can be amended prior to passage.

Section 5 of the Act designates those agencies that are to be eligible for financial assistance. The various sections of this Act, particularly Section (a)(3), indicate that this financial assistance will go directly from the U. S. Office of Education to the local school districts and also to private non-profit corporations. Since the State Educational Agencies are already guiding our local school boards in the proper utilization of federal funds for education, I feel that this Act would be improved by channeling the funds through the State Education Agency rather than direct negotiation between the Office of Education and the local district. Unwarranted and unnecessary duplication of services could easily result from applications going to two sources. I am also particularly concerned over grants to private non-profit corporations as will be evidenced in later comments in this letter.

Section 5 (c) apparently limits the utilization of these funds to agencies in which the use of these funds would result in a net increase of the aggregate operating expenditures. In the case of public local school districts, it is possible that legislative mandates for millage limitation could result in the decrease of per pupil expenditures. This would not be the case for a private agency, particularly if the agency was recently incorporated. The per pupil cost appears in a later section of this bill. The combination of provisions could easily result in local public school districts being ineligible for badly needed assistance, while a new non-profit corporation that did not have the experience or the expertise to handle a project of this nature be completely eligible from the standpoint of their financial expenditures per pupil.

Honorable Spessard L. Holland
Page 2
June 4, 1970

Section 7 of the proposed legislation makes provision for a State Education Agency to be given a reasonable opportunity to offer recommendations to the applicant and to submit comments to the Secretary concerning any application for assistance under this Act. As I stated earlier, I feel that it is a mistake to channel resources of this nature directly to the local educational agencies. The opportunity to make comments and suggestions has been tried in connection with the ESEA Title III projects, and has now been superceded by channeling assistance through the State Education Agency. I would hope that we could profit from this past experience and avoid the same error in connection with this proposed Act.

Congress should understand, and I am sure that you do, that each categorical aid program requires administrative time on the part of both the local agency or the state agency for the preparation of reporting techniques, supervision, and handling the multitude of administrative details connected with the expenditure of any sums of money. While this legislation does contain provision for certain special administrative activities (See Section 6 (i), it completely overlooks the burden of general administrative needs which all school districts and state education agencies are increasingly hard pressed to meet. If Congress feels that it is unable to provide that a portion of the funds made available under this Act may be used for general administration at the state or local agency, then it should at least provide that the general administration activities required by this Act may be included as legitimate costs in any of the other federal aid to education acts in which funds have been made available to cover administrative costs.

I appreciate the opportunity to present my feelings on this legislation and again let me urge my wholehearted support for the purposes to be served but also my concern that we be permitted to dovetail it into existing programs in order to maximize the benefits to the disadvantaged pupils we are trying to reach.

Sincerely,

Floyd

Floyd T. Christian

FTC/sa

JAMES O. EASTLAND, MISS., CHAIRMAN
JOHN L. MCCLELLAN, ARK.
SAM J. ERVIN, JR., N.C.
THOMAS J. DODD, CONN.
PHILIP A. HART, MICH.
EDWARD M. KENNEDY, MASS.
BIRCH BAYH, IND.
QUENTIN N. BURDICK, N. DAK.
JOSEPH D. TYDINGS, MD.
ROBERT C. BYRD, W. VA.
ROMAN L. HRUSKA, NEBR.
HIRAM L. FONG, HAWAII
HUGH SCOTT, PA.
STROM THURMOND, S.C.
MARLOW W. COOK, KY.
CHARLES MCC. MATHIAS, JR., MD.
ROBERT P. GRIFFIN, MICH.

JOHN H. HOLLOMAN III
CHIEF COUNSEL AND STAFF DIRECTOR

SUBCOMMITTEE:
SAM J. ERVIN, JR., N.C., CHAIRMAN
PHILIP A. HART, MICH.
HUGH SCOTT, PA.

ROBERT BLAND SMITH, JR.
CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REVISION AND CODIFICATION
(PURSUANT TO S. RES. [illegible], 91ST CONGRESS)
WASHINGTON, D.C. 20510

June 18, 1970

JUN 19 1970

Honorable Claiborne Pell
Chairman
Senate Subcommittee on Education
United States Senate
Washington, D. C.

Dear Claiborne:

I am sending you a copy of a letter which I have received from Mr. R. Max Abbott, Office of the Superintendent of Public Instruction, State of North Carolina, regarding S. 3883, the Emergency School Aid Act of 1970.

I know you are in the process of holding hearings on this bill and I would appreciate it if you would give thoughtful consideration to Mr. Abbott's feeling that the State Board of Education should not be bypassed in planning activities for school desegregation purposes under the bill. I would appreciate it if you would print Mr. Abbott's letter in the hearing record on S. 3883, and if you feel that he could supply you with additional information or come to Washington to testify before the subcommittee, please do not hesitate to let me know.

With kindest regards, I am

Sincerely yours,

Sam

Sam J. Ervin, Jr.

SJE:rsp
Enclosure

State of North Carolina
Superintendent of Public Instruction
Raleigh 27602

A. CRAIG PHILLIPS
SUPERINTENDENT

R. MAX ABBOTT
ASSISTANT
SUPERINTENDENT

June 10, 1970

SAM J. ERVIN, JR.
RECEIVED
JUN 1[illegible]
Washington, D. C. 20510

Honorable Sam J. Ervin, Jr.
United States Senate
Washington, D. C.

Dear Senator Ervin:

Members of the staff of the State Department of Public Instruction have been reading with intense interest the publicity about the President's proposal that the Congress appropriate funds for the "Emergency School Aid Act of 1970" to give schools assistance in accomplishing desegregation. While our staff is in favor of providing funds to aid the school administrative units in desegregating the schools in fiscal 1972, we are concerned about the fact that the monies will be approved by HEW for local school districts bypassing the State Department of Public Instruction. In the North Carolina State Department of Public Instruction, a special assistant for Human Relations with a staff of two professional persons has been coordinating activities in the local school administrative units for the purpose of helping them in orderly desegregation of the public schools, staffs, and students. Since this office has been coordinating desegregation activities among the school districts, the Human Relations staff could contribute a great deal toward effective use of these funds by coordinating activities among the school districts which will submit projects to be approved and funded by HEW.

According to information available to the State Department of Public Instruction, activities which will qualify for funding are: special administrative activities incident to implementing a plan for desegregation or reduction of racial isolation; renovation of facilities; inservice education for teachers; guidance programs; remedial programs; curriculum materials; etc.

We believe that the State Department of Public Instruction under the

State Board of Education should not be bypassed in planning these very important activities for school desegregation purposes. Your help in bringing this need to the attention of the Congress of the United States will be appreciated.

Sincerely,

Max Abbott
R. Max Abbott

RMA/jt

JAMES O. EASTLAND, MISS., CHAIRMAN
JOHN L. MCCLELLAN, ARK.
SAM J. ERVIN, JR., N.C.
THOMAS J. DODD, CONN.
PHILIP A. HART, MICH.
EDWARD M. KENNEDY, MASS.
BIRCH BAYH, IND.
QUENTIN N. BURDICK, N. DAK.
JOSEPH D. TYDINGS, MD.
ROBERT C. BYRD, W. VA.
ROMAN L. HRUSKA, NEBR.
HIRAM L. FONG, HAWAII
HUGH SCOTT, PA.
STROM THURMOND, S.C.
MARLOW W. COOK, KY.
CHARLES MCC. MATHIAS, JR., MD.
ROBERT P. GRIFFIN, MICH.

JOHN H. HOLLOMAN III
CHIEF COUNSEL AND STAFF DIRECTOR

SUBCOMMITTEE:
SAM J. ERVIN, JR., N.C., CHAIRMAN
PHILIP A. HART, MICH.
HUGH SCOTT, PA.

ROBERT BLAND SMITH, JR.
CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REVISION AND CODIFICATION
(PURSUANT TO S. RES. 348, 91ST CONGRESS)
WASHINGTON, D.C. 20510

June 17, 1970

JUN 18 1970

Honorable Claiborne Pell
Chairman
Senate Subcommittee on Education
United States Senate
Washington, D. C.

Dear Claiborne:

In continuation of my letter to you of June 10, I am sending you an additional letter which I have received from Superintendent Y. H. Allen of the Robeson County Schools in North Carolina. I would appreciate it if you would print this letter in the hearing record also.

Additionally, I feel sure that Mr. Allen would be willing to come up and testify if you feel his expertise is needed for your subcommittee's investigation.

With kindest regards, I am

Sincerely yours,

Sam

Sam J. Ervin, Jr.

SJE:rsp
Enclosure

W. K. CULBRETH, CHAIRMAN
ROUTE 4, LUMBERTON, N. C.

J. G. SESSOMS, VICE-CHM.
ROUTE 5, LUMBERTON, N. C.
STEVEN STONE
ROUTE 1, ORRUM, N. C.
HARRY WEST LOCKLEAR
PEMBROKE, N. C.

Robeson County Board of Education

V. H. ALLEN, COUNTY SUPERINTENDENT
LUMBERTON, NORTH CAROLINA
ZIP CODE 28358

I. J. WILLIAMS
REX, N. C.
W. ALBERT McCORMICK, JR.
ROWLAND, N. C.
THURMAN ANDERSON
ROWLAND, N. C.

June 15, 1970

The Honorable Sam J. Ervin, Jr.
United States Senate
Washington, D. C.

Dear Senator Ervin:

In response to your letter of June 10, 1970 relative to the Emergency School Aid Act of 1970, S. 3883, I am listing below further opinions relative to this Act. As stated in previous correspondence, I am speaking as a superintendent who is in the process of carrying out a total desegregation program where we have three races, black, white and Lumbee Indian, as well as being in an area with a high degree of economic deprivation. Therefore, I do feel that I can speak from some in-the-field experience.

1. As stated in my correspondence of June 3, 1970, I believe that this proposed Emergency Act is a necessity and is one of the most-needed appropriations relative to the public schools that has come before Congress in some time. However, as a practicing school administrator deeply involved in school desegregation, I do strongly believe that any such program approved by Congress should be on the basis of giving realistic and tangible aid - that which is needed in the particular school system and which will meet the particular needs as determined by the local school people in helping them to bridge the pitfalls we face in school desegregation.

2. We certainly hope that any act approved by Congress will do all possible to remove or eliminate the middle-man bureaucratic red tape, both at the federal and state levels, in getting these funds to the local school districts. As stated in an earlier letter, many of the "rules and regulations" as established in various offices, both at the state and federal level, are so burdensome that the local school administrators sometimes find it just as easy to try to solve their problems without seeking such funds.

3. As we really get deeply involved in the actual desegregation of our total school program, we find more and more that our school plants were built and located as segregated schools, and many do not fit into desegregated patterns. Therefore, new funds are greatly needed for improved or new facilities and equipment, such as classrooms, shops, laboratories, etc. Until such funds are made available, I do not believe we will ever completely and properly desegregate our schools. This is an area where the federal government could be of great aid.

4. We would hope that any act approving such funds would not have the distribution of these funds based on sociological experiments but rather on practical and proven programs befitting the local situation, as determined by local people.

5. We must be able to convince our people, whether black, white or Lumbee Indian, that there are advantages to their new desegregated schools, and in order for us to do this, we must be able to provide improved, expanded and new programs in the desegregated school, where in many cases, I am afraid, due to plant size, location, etc., we are in fact actually doing the opposite in our desegregation program. As stated in our earlier letter, this can be done only if we have the resources to show tangible results, both to students and to our communities as a whole, by new vocational programs, new extra-curricular areas, and improved instructional facilities.

Again, we will be happy to provide any information that would be helpful to you or any members of Congress relative to this act, and may I state in closing that I strongly believe that if an act is passed that only skirts the edge of meeting the needs of our desegregation problems and leaves realities in favor of sociological theories rather than accepted realities, those funds would be of little value to the children actually involved in the desegregation process and in fact could be detrimental to the whole program. The general public is in great need of seeing more positive and constructive results of desegregation, determined and carried out at the local level without the shackles of governmental guidelines. I believe that school administrators and boards of education are committed to and will carry out this desegregation process, even in our more difficult areas, if given the opportunity under the conditions as mentioned above.

Sincerely,

Y. H. Allen

Y. H. Allen,
County Superintendent

YHA:ewm

AMERICAN LIBRARY ASSOCIATION
WASHINGTON OFFICE: THE CORONET — 200 C STREET, S. E., WASHINGTON, D. C., 20003
TELEPHONE: AREA CODE 202, LINCOLN 7-4440

EXECUTIVE OFFICES:
50 EAST HURON ST.
CHICAGO, ILL., 60611

June 25, 1970

The Hon. Claiborne Pell, Chairman
Subcommittee on Education of the
Labor and Public Welfare Committee
Rm. 4228, New Senate Office Bldg.
U.S. Senate
Washington, D. C. 20510

Dear Senator Pell:

In connection with your Committee's hearings on the desegregation provisions of the Emergency School Aid Act of 1970 (S. 3883), you may be interested in the enclosed resolution adopted by the ALA Council at our 1970 Midwinter meeting. This resolution is addressed only to those institutions which are organized to circumvent the Law. It was transmitted to the Governors of the fifty States, to the Secretary of the Department of HEW, and to the Commissioner of Education.

We would appreciate it if you could make this statement a part of the official hearing record.

Sincerely,

Germaine Krettek
Germaine Krettek, Director
ALA Washington Office

GK/bp

Enclosure

RESOLUTION

Library Service to Educational Institutions Established to Circumvent Desegregation Laws

(Adopted by ALA Council, January 23, 1970)

WHEREAS the United States Supreme Court of this land has called for the desegregation of public schools by February 1, 1970, and

WHEREAS public, academic, and school libraries in areas where desegregation has been ordered are in some cases lending and in other cases planning to lend materials to racist institutions conceived for the purpose of circumventing the law of the land, and

WHEREAS such school administrators and many civil leaders in such areas have in fact asked for active support from libraries because funding for their schools and institutions is inadequate to provide for libraries and textbooks, and

WHEREAS the American Library Association is cognizant of the social responsibilities of libraries serving the people of the United States and is on record as being opposed to racism in any and all of its forms, therefore, be it

RESOLVED, That the libraries and/or librarians who do in fact through either services or materials support any such racist institutions be censured by the American Library Association.

The above resolution was adopted by the Black Caucus at its meeting on Wednesday evening, January 21, 1970, and prepared for presentation to and adoption by the third session of the Council of the American Library Association, January 23, 1970.

STATE OF ARKANSAS
Department of Education
LITTLE ROCK

A. W. FORD
COMMISSIONER

August 5, 1970

The Honorable Claiborne Pell, Chairman
Senate Subcommittee on Education
4228 New Senate Office Building
Washington, D. C. 20510

Dear Senator Pell:

Assuming that President Nixon will sign into law or permit the proposal to become law without his signature, I desire to submit my thinking with regard to the possible use of whatever portion Arkansas receives of the $75,000,000 granted by the Congress for those school districts experiencing desegregation problems. I trust you will make whatever use of this statement you desire if you believe it pertinent to the implementation of the Act.

Arkansas has 215 biracial districts and it appears that 120 to 125 of these districts may qualify for assistance under the Emergency Assistance Act. This number will be reduced if the federal government restricts participants to those districts which have complied with the Civil Rights Act subsequent to September 1, 1968. Members of this staff have been advised in a meeting in Dallas that districts which complied with the law prior to September 1, 1968, will not be included on the eligible list. Presumably, the Administration plans to take the position that districts which complied prior to this date no longer have significant problems as defined in the Act.

It is my understanding that the Act calls for the assistance to be awarded local school districts directly by the U. S. Office of Education through the Equal Educational Opportunities branch of that office with such awards to be made after submission of a project by the local district, and that there will not be a definite allocation made either to a state or to a district. It seems to me that this procedure makes use of two greatly undesirable features which are unsound educationally. The ignoring of the state by federal representatives in the area of educational practices, other than racial discrimination, is uncalled for, and the system of awarding grants directly on the basis of how well a local district can develop a project is unfair to a large number of districts which do not have personnel trained in the development of such projects. This, in fact, discriminates against districts which are both small and poor.

Funds appropriated through the Elementary and Secondary Education Act of 1965 were used by the Civil Rights Division of the Department of Health, Education and Welfare as a lever to force desegregation of school districts. Seemingly these new funds are to be used as a lever to force curricular and instructional programs to comply with the thinking of the Equal Educational Opportunities arm of DHEW. The former proved a desirable tool for accomplishing the aim of the 1965 Act. I think the implications of the new Act are unsound and unwarranted.

Unless a substantial portion of the new funds is allocated toward the upgrading of school plants, there is doubt in my mind that programs of community involvement and curricular changes will accomplish much toward making desegregation a smooth operation.

Housing is one of the most critical needs in making a smooth transition from a dual school system to a unitary system. Moreover, it is my opinion that positive leadership of state departments of education is critical in bringing about meaningful progress in this most difficult task. Therefore, bypassing the potential of state departments of education is an error in judgment on the part of the Congress and the Administration. May I add that the Arkansas Department of Education has given positive leadership and support in efforts of local districts to implement the Civil Rights Act of 1964.

The proposed terminal program makes it unwise for many districts to add personnel to a payroll whose salaries cannot be met after the terminal period is over. The authorization for the Office of Education to enter into contracts with organizations other than school districts or departments of education could encourage militant groups to become even more of a problem than at present.

Senator Claiborne Pell
August 5, 1970
page 3

In-service training programs are definitely needed, but such programs would be more successful as a part of the general educational program in which all teachers are involved than as a separate program for which certain teachers receive extra pay for attending meetings in which highly paid out-of-state consultants do little more than propagandize ideas of little educational value. Extra pay to an employee has no appeal to me. It should not be necessary to spend tax money lavishly for professional consultants in order to encourage educational personnel to do their duty, and to assume their rightful responsibilities.

Personnel in the Arkansas Department of Education will be available to help local school districts in the development of projects designed to accomplish the aims of the Emergency Assistance Act and will be pleased to do so when called upon. We could be more effective if we were in a position of decision making with respect to project approval and grants for assistance.

Respectfully yours,

A. W. Ford
A. W. Ford

Council of
CHIEF STATE SCHOOL OFFICERS
An Independent Corporation
1201 SIXTEENTH STREET, NORTHWEST
WASHINGTON, D.C. 20036
Area Code 202—[illegible]9400

Don M. Dafoe
Executive Secretary
202—667-5127

Hubert Wheeler
President
State Commissioner of Education
Jefferson City, Missouri

Byron W. Hansford
First Vice President
State Commissioner of Education
Denver, Colorado

Floyd T. Christian
Second Vice President
State Commissioner of Education
Tallahassee, Florida

DIRECTORS

T. H. Bell
State Superintendent of Public Instruction
Salt Lake City, Utah

D. F. Engelking
State Superintendent of Public Instruction
Boise, Idaho

Martin W. Essex
State Superintendent of Public Instruction
Columbus, Ohio

Jack P. Nix
State Superintendent of Schools
Atlanta, Georgia

William J. Sanders
State Commissioner of Education
Hartford, Connecticut

James A. Sensenbaugh
State Superintendent of Schools
Baltimore, Maryland

June 25, 1970

Senator Claiborne Pell, Chairman
Subcommittee on Education
325 Old Senate
United States Senate
Washington, D.C.

Dear Senator Pell:

The Council of Chief State School Officers meeting in Washington last week discussed the Emergency School Aid Act of 1970 (S3883). We wish to call to your attention several provisions of the bill on which we have questions in the hope that our point of view may be reflected in Committee action.

Section 5 of the Act designates those agencies that are to be eligible for financial assistance. The various sections of this Act, particularly Section (a) (3), indicate that this financial assistance will go directly from the U.S. Office of Education to the local school districts and may also go to private agencies. Since the State Educational Agencies are already guiding our local school boards in the proper utilization of federal funds for education, we feel that this Act would be improved by channeling the funds through the State Education Agency rather than direct negotiation between the Office of Education and the local district. Unwarranted and unnecessary duplication of services could easily result from applications going to two sources. We are also particularly concerned over grants to private agencies as will be evidenced in later comments in this letter.

Section 5 (c) apparently limits the utilization of these funds to agencies in which the use of these funds would result in a net increase of the aggregate operating expenditures. In the case of public local school districts, it is possible that legislative mandates for millage limitation, other budgetary problems, or combination or reorganization of schools could result in a net decrease of per pupil expenditures. This would not be the case for a private agency, particularly if the agency was recently incorporated. The combination of provisions could easily result in local public school districts being ineligible for badly needed assistance, while a new non-profit corporation that did not have the experience or the expertise to handle a project of this nature might be completely eligible from the standpoint of their financial expenditures per pupil.

Section 7 of the proposed legislation makes provision for a State Education Agency to be given a reasonable opportunity to offer recommendations to the applicant and to submit comments to the Secretary concerning any application for assistance under this Act. We believe that it is a mistake to channel resources of this nature directly to the local educational agencies. The opportunity to make comments and suggestions has been tried in connection with the ESEA Title III projects, and has now been superceded by channeling assistance through the State Education Agency. We would hope that we could profit from this past experience and avoid the same error in connection with this proposed Act.

We know that you recognize that each categorical aid program requires administrative time on the part of both the local agency or the state agency for the preparation of reporting techniques, supervision, and handling the multitude of administrative details connected with the expenditure of any sums of money. While this legislation does contain provision for certain special administrative details connected with the expenditure of any sums of money. While this legislation does contain provision for certain special administrative activities (See Section 6 (I), it completely overlooks the burden of general administrative needs which all school districts and state education agencies are increasingly hard pressed to meet. If Congress feels that it is unable to provide that a portion of the funds made available under this Act may be used for general administration at the state or local agency, then it should at least provide that the general administrative activities required by this Act may be included as legitimate costs in any of the other federal aid to education acts in which funds have been made available to cover administrative costs.

In general the Council members support the concepts and the purposes to be served as expressed in this legislation. We are concerned, however, that the legislation and subsequent guidelines and regulations be sufficiently flexible to permit dovetailing these programs with existing programs to maximize benefits.

Yours sincerely,

Don M. Dafoe
Executive Secretary

LEADERSHIP
CONFERENCE
ON
CIVIL RIGHTS

ROY WILKINS, Chairm
ARNOLD ARONSON, Secreta
JOSEPH L. RAUH, JR., Couns
BAYARD RUSTIN, Executive Committee Chairma
CLARENCE M. MITCHELL, Legislative Chairma
JAMES HAMILTON, Compliance & Enforcement Chairm
MARVIN CAPLAN, Director Washington Offi
J. FRANCIS POHLHAUS, Special Consulta
YVONNE PRICE, Executive Assista

2027 Mass. Ave., N.W., Washington, D.C. 20036 phone 667-1780 • New York address: 55 West 42nd St., New York 10036, phone 564-34

September 14, 1970

STATEMENT IN OPPOSITION TO THE
NATIONAL SCHOOL DESEGREGATION BILL, S. 4167
BY
CLARENCE MITCHELL, CHAIRMAN, LEGISLATIVE COMMITTEE
LEADERSHIP CONFERENCE ON CIVIL RIGHTS

We oppose S. 4167 because we believe it to be a blatant attack upon the 14th Amendment rights of American school children.

Section 5 of the 14th Amendment gives to the Congress the right to pass "appropriate legislation" to enforce the provisions of the Amendment. The Supreme Court, in interpreting this section in _Katzenbach_ v _Morgan_, has confirmed that the Congress can confer rights under it that go beyond those that can be affirmed by the courts in applying other provisions of the Amendment.

Unfortunately, the purpose of S. 4167 is not to expand rights under Section 5, but the opposite - to drastically restrict them. It would, by cataloguing rights and remedies in the field of school desegregation, limit the options now open to the courts in applying the Constitution on a case by case basis. This approach to Section 5 of the 14th Amendment was specifically rejected in the majority opinion of the Supreme Court in the _Katzenbach_ case.

Chief among the objectives of the bill is to enshrine into Federal law, two of the most objectionable policies favored by the segregationists: (1) "freedom of choice" here disguised somewhat as the right of a child to transfer from a school in which he is in the majority to one in which he is in the minority; and (2) a neighborhood school policy so inflexible as to prevent any real progress toward desegregation.

There are other restrictive provisions that would undermine rights established by court decisions.

The bill prohibits segregation based "solely" on race. Not only does this open up the possibility of the use of "track" systems and other evasive methods and the misuse of psychological and other types of testing, etc., but it excludes from coverage segregation based on color or national origin. Spanish-American students, among others, would not be protected.

The bill is restricted in coverage to public schools. The so-called private academies - found in many instances to be operating under state action - would apparently be free to continue their unconstitutional practices.

It provides as a basis for judging constitutionality the "good faith" of public school officials in discharging their duties (to be determined as a matter of fact by Federal District Court judges). This directly conflicts with court decisions rejecting the good faith defense and determining constitutionality on the basis of results.

We believe that this discussion of provisions of the bill, though not exhaustive, is an adequate basis for Congress to reject it on constitutional grounds.

There is an additional practical reason why this bill should not become law. The entire history of school desegregation since the Brown decision has been marked by massive efforts of evasion of court decisions, school guidelines and statutory enactments. These evasions have been dealt with, albeit inadequately, by court decisions developing the law as applied to concrete factual situations. To codify the law of desegregation in the few pages of S. 4167 would be to establish rigid standards that would be subject to circumvention by those intent on defying the law, while denying to courts their traditional flexibility to fashion remedies to meet the situations with which they are confronted.

We believe acceptance of this bill would go a long way toward giving Congressional endorsement to the idea that true desegregation is not attainable under our democratic system.

B. EVERETT JORDAN N.C., CHAIRMAN
HOWARD W. CANNON, NEV. CARL T. CURTIS, NEBR.
CLAIBORNE PELL, R.I. JOHN SHERMAN COOPER, KY.
ROBERT C. BYRD, W. VA. HUGH SCOTT, PA.
JAMES B. ALLEN, ALA. STROM THURMOND, S.C.
GORDON F. HARRISON, STAFF DIRECTOR
HUGH Q. ALEXANDER, CHIEF COUNSEL

United States Senate
COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, D.C. 510

July 2, 1970

Dr. R. Max Abbott
Assistant Superintendent
Department of Public Instruction
State of North Carolina
Raleigh, North Carolina 27602

Dear Max:

I was glad to get your recent letter indicating your concern over the possibility that the State Department of Public Instruction may be by-passed in the administration of the President's program for special desegregation school aid in North Carolina.

I am glad to have your comments on this subject and I share your feeling that, since the Civil Rights Division of the Justice Department is apparently going to hold state school authorities responsible for enforcement of school desegregation in North Carolina, your department certainly ought to have a voice in how funds are used in solving desegregation problems.

As you now know, the first $150 million of the special desegregation money has been voted by the Senate as a part of the education appropriations bill for the coming fiscal year. Since the House bill did not contain a similar provision, however, this will be a conference item when the Senate-House conferees meet on the bill in mid-July.

The remainder of the money will have to be authorized separately by the Senate Labor and Public Welfare Committee and I am going to send a copy of your letter to that committee with a request for full consideration of your position in the drafting of that measure.

With all best regards,

Sincerely,

B. Everett Jordan, USS

BEJ:bbh

State of North Carolina
Superintendent of Public Instruction
Raleigh 27602

A. CRAIG PHILLIPS
SUPERINTENDENT

R. MAX ABBOTT
ASSISTANT
SUPERINTENDENT

June 10, 1970

The Honorable B. Everett Jordan
United States Senate
Washington, D. C. 20515

Dear Senator Jordan:

Members of the staff of the State Department of Public Instruction have been reading with intense interest the publicity about the President's proposal that the Congress appropriate funds for the "Emergency School Aid Act of 1970" to give schools assistance in accomplishing desegregation. While our staff is in favor of providing funds to aid the school administrative units in desegregating the schools in fiscal 1972, we are concerned about the fact that the monies will be approved by HEW for local school districts bypassing the State Department of Public Instruction. In the North Carolina State Department of Public Instruction, a special assistant for Human Relations with a staff of two professional persons has been coordinating activities in the local school administrative units for the purpose of helping them in orderly desegregation of the public schools, staffs, and students. Since this office has been coordinating desegregation activities among the school districts, the Human Relations staff could contribute a great deal toward effective use of these funds by coordinating activities among the school districts which will submit projects to be approved and funded by HEW.

According to information available to the State Department of Public Instruction, activities which will qualify for funding are: special administrative activities incident to implementing a plan for desegregation or reduction of racial isolation; renovation of facilities; inservice education for teachers; guidance programs; remedial programs; curriculum materials; etc.

We believe that the State Department of Public Instruction under the State

Board of Education should not be bypassed in planning these very important activities for school desegregation purposes. Your help in bringing this need to the attention of the Congress of the United States will be appreciated.

Sincerely,

Max Abbott

DR. R. Max Abbott

RMA/jt

T.E.A.M.
TEXANS FOR THE EDUCATIONAL ADVANCEMENT
OF MEXICAN AMERICANS
P.O. BOX 9372   SAN ANTONIO, TEXAS 78204

ec'd JUL
Ans'd...

June 29, 1970 7/9/70

THE EXECUTIVE COUNCIL
OFFICERS

Josué M. González
President

Hubert Miller, Ph.D.
1st Vice President

Mrs. Margarita Huantés
2nd Vice President

James Brennan, Ph.D.
V. P. for Public Relations

John Marchi
Secretary

Remigio L. García
Treasurer

MEMBERS AT LARGE

Len Ainsworth, Ph.D.
Lubbock

Fr. Michael Allen, O.M.I.
Edinburg

José A. Cárdenas, Ph.D.
San Antonio

Severo Gómez, Ph.D.
Austin

A. R. Ramírez
Edinburg

Homero Sigala
Del Rio

Oscar Velasco
San Antonio

Senator Pell U.S.S.
United States Senate
Washington, D.C.

Dear Senator Pell,

This letter is in reference to Senate Bill 3883.

As a Mexican-American Educator and Executive Committee Member of Texans for the Educational Advancement of Mexican Americans (T.E.A.M.), I want to urge that the following two items be included in Senate Bill 3883.

(1) That improvements and provisions be included for the Education of Mexican Americans.

(2) That Mexican Americans be brought to the hearing to testify on the problems concerning the education of the Mexican American.

Thanking you for your consideration, I remain

Sincerely,

R. L. Garcia

Remigio L. Garcia
Principal
Burnet School
406 Barrera
San Antonio, Texas
78200

Treasuer
T.E.A.M.

T.E.A.M.

P.O. BOX 9372 SAN ANTONIO, TEXAS 78204

THE EXECUTIVE COUNCIL
OFFICERS

Josué M. González
President

Hubert Miller, Ph.D.
1st Vice President

Mrs. Margarita Huantés
2nd Vice President

James Brennan, Ph.D.
V. P. for Public Relations

John Marchi
Secretary

Remigio L. García
Treasurer

MEMBERS AT LARGE

Len Ainsworth, Ph.D.
Lubbock

Fr. Michael Allen, O.M.I.
Edinburg

José A. Cárdenas, Ph.D.
San Antonio

Severo Gómez, Ph.D.
Austin

A. R. Ramírez
Edinburg

Homero Sigala
Del Rio

Oscar Velasco
San Antonio

June 29, 1970

U. S. Senator Pell
U. S. Congress
Washington, D. C.

Dear Senator:

Regarding S3883 I deem it highly important that the bill contain specific provisions for the advancement of educational opportunities of the Mexican Americans. The bill contains many laudatory aspects, which attempt to further educational opportunities among the Black people, but in so doing it can easily overlook the serious problems we face in educational opportunities for Mexican Americans. To further this objective I strongly recommend that during the opening hearings, Mexican American educators & persons knowledgeable with the problems of education for the Mexican Americans be called upon during the open hearings to give their testimony.

Thank you for your kind attention to this matter.

Sincerely,

Hubert J. Miller

Dr. Hubert J. Miller
Acting President

HJM: trn
cc

T.E.A.M.
TEXANS FOR THE EDUCATIONAL ADVANCEMENT
OF MEXICAN AMERICANS
P.O. BOX 9372 SAN ANTONIO, TEXAS 78204

July 2, 1970

THE EXECUTIVE COUNCIL
OFFICERS

Josué M. González
President

Hubert Miller, Ph.D.
1st Vice President

Mrs. Margarita Huantés
2nd Vice President

James Brennan, Ph.D.
V. P. for Public Relations

John Marchi
Secretary

Remigio L. García
Treasurer

MEMBERS AT LARGE

Len Ainsworth, Ph.D.
Lubbock

Fr. Michael Allen, O.M.I.
Edinburg

José A. Cárdenas, Ph.D.
San Antonio

Severo Gómez, Ph.D.
Austin

A. R. Ramírez
Edinburg

Homero Sigala
Del Rio

Oscar Velasco
San Antonio

Senator Clayborne Pell
Senate Office Building
Washington, D. C.

RE: Senate Bill 3883

Dear Senator Pell:

I have noted your interest in trying to provide equal educational opportunities for all students. I especially admire your efforts in hastening school boards to comply with federal guidelines regarding the integration of schools.

I would like to ask you to include in your Bill 3883 improvements and provisions for the education of Mexican-Americans.

As the Catholic chaplain at a predominantly Mexican-American college, I am very interested in seeking help and am concerned for our students. Could I ask you to include improvements and provisions for Mexican-American students who are desperately trying to acquire an education. I know that you are aware of the fact that most school districts do not use Title I funds to improve the curriculum for the non-English speaking Mexican-American child.

Thank you for considering this request and in adding improvements and provisions for Mexican-Americans in the field of education.

Sincerely,

Fr. Michael Allen, O.M.I.

Fr. Michael Allen, O.M.I.
Catholic Chaplain at
Pan American College

MA/gg

THE BUSING MYTH: SEG ACADEMIES BUS MORE CHILDREN, AND FURTHER—A SOUTH TODAY REPORT

(By Leonard Levine and Kitty Griffith)

Leonard Levine is a graduate student in psychology at Georgia State University, Atlanta. He was press secretary for Maynard Jackson's Georgia campaign for the U.S. Senate in 1968. Kitty Griffith is assistant editor of South Today.

Southern "segregation academies" are busing more of their students, and busing them further, than are public schools in the region, a survey for South Today reveals. And some Deep South legislatures, whose members have deplored busing of students to achieve integration, are beginning to encourage busing for the academies.

A close comparison between busing in public schools and busing in the new segregated private schools suggests these conclusions:

Desegregation plans approved by the Department of Health, Education and Welfare have tended to reduce rather than increase busing in the South.

Many segregation academies are making no bones about their long-distance transportation systems, bragging that they are busing in students from several counties. One academy apparently buses some students 120 miles a day.

The academies which do not own buses sometimes encourage parents to join together to purchase and operate buses.

Some state governments seem to be moving toward indirect subsidy of segregation academy busing.

These conclusions stand in sharp contrast to frequent statements on busing in recent weeks by Southern politicians. Some segregation-minded senators and congressmen lately have directed their fire not mainly toward desegregation as such but toward long-distance busing, suggesting that such transportation is dangerous to the children and damaging to education.

In introducing his freedom-of-choice amendment to the Elementary and Secondary Education Act in February, Sen. John Stennis of Mississippi said its purpose was to provide freedom of choice and to bar "the busing of students away from their community schools without the consent of their parents." He referred to the "merciless mandate" of a court which "takes a little girl and sends her to the other side of town where she knows no one. . . ."

Gov. John McKeithen of Louisiana recently told the Louisiana State School Board Association: "I will not allow my children to be bused . . . to be treated like cattle." In a full page ad which ran in newspapers and magazines across the country McKeithen also stated: "HEW-inspired and court-approved plans have required the busing of children 20 to 30 miles from their homes, when neighborhood schools are within walking distance. These precipitous and unwarranted mandates equate no justice to the welfare of the child, the parent, the teacher, or the survival of public education."

Former Alabama Gov. George Wallace said in January, "I say, and I've said all along, that it's against the law to bus children. The Civil Rights Act prohibits it."

The facts disclosed in a survey of segregation academic suggest, however, that many of those who cry loudest about the busing involved in integration plans have no fear of busing if it is to maintain segregation (as it traditionally has done in the South).

TEN ACADEMIES

In the South today survey, figures on pupil busing were obtained from 10 segregated private schools in eight states. (Eleven schools were contacted; one refused to provide information). The schools were chosen at random, and with an effort to see that they were, overall, a representative sampling of such schools. They range from relatively stable and financially strong institutions, such as Wade Hampton Academy in Orangeburg, S. C., to schools with seemingly weaker underpinning, such as the Autauga County Private School Foundation in Prattville, Ala.

A figure was obtained from each academy indicating the percentage of students riding buses. These percentages then were averaged. Similarly, a figure was obtained from each of the eight states indicating the percentage of students using publicly-provided buses, and these state percentages were averaged. On this basis, the survey indicated that public schools in the eight states are busing an average of 49.5 per cent of their pupils and the academies are busing an average of 62 per cent.

(As a mathematical cross-check, the number of public school students bused in the eight states also was totaled. A regional percentage was then calculated. By this method it was determined that 48.36 per cent of all pupils enrolled in the public schools of the eight states studied are bused. This figure correlates closely with the 49.5 per cent calculated by averaging percentages of students bused in each state.)

On the matter of number of miles bused:

Figures were obtained from 10 academies indicating the average number of miles traveled by bus for all *bused*, students. These averages then were averaged. Similarly, closely-calculated estimates were obtained from state education officials for the 1969–70 school year indicating the average number of miles traveled by bus for all bused students. These averages were averaged.

Public school students who are bused in Alabama travel an average of 11.5 miles each way; in Florida, 12; in Georgia, 10; in Louisiana, 13; in Mississippi, in North Carolina, 4; in South Carolina, 10; and in Virginia, 11.5.

On that basis, the figures indicated that bused students in public schools are traveling an average of 10.1 miles a day each way and bused students in segregation academies are traveling an average of 17.7 miles each way. Bused pupils in the sample of segregation academies are traveling an average of 7.6 miles further each way to and from school than are bused pupils of public schools in the eighth states.

Further evidence for substantial segregated school busing comes from *Atlanta Journal* reported Junie Brown, who earlier this year visited 12 Georgia segregated academies. Mrs. Brown says students from all 12 schools are bused varying distances, ranging up to 50 miles one way at Holy Bible School in Lamar County. In Flint River Academy, in Woodberry, Ga., students ride buses in from 13 counties. The academy's headmaster, John Moore, has five buses, one of which he keeps in Griffin, permanently, to handle students coming from that direction.

SCHOOL BUS LAWS

That private school busing is an important, as well as expensive, proposition, is borne out by a number of legislative developments. The State of Louisiana, under a 1938 Supreme Court ruling, has been providing money to bus *all* students, public and private alike. The amount appropriated this year is $30 million. Since 50 per cent of Louisiana's students ride school buses, probably 70,000, or half the children in the state's private school enrollment, ride buses. There are no available figures on how many of these students attend segregated schools, but since mid-1969 there has been a sharp increase in the number of these schools.

Bills providing tax relief for private school transportation have been introduced in at least three states during the past year. The Georgia and North Carolina bills failed, but the Mississippi Legislature passed a bill which put private schools on the same footing as public schools in the purchase of bus tags. Private schools are no longer required to purchase expensive commercial licenses in order to operate buses. They now will enjoy the same privileged license tag status as public school transportation systems.

OTHER DEVELOPMENTS

Mrs. Frances Pauley, who is with HEW's Office of Civil Rights in Atlanta, reports seeing buses belonging to the Rebuls Academy, a segregated school in Learned, Miss. She thought it curious that, in painting the buses grey, someone forgot to cover the tops, which were, one might say, "public school yellow." Some parents in another Mississippi town, Gillsburg, are so determined to avoid anything but token integration that they have for years operated a private line of school buses—painted white—to carry their children to the Liberty, Miss., public schools, which are overwhelmingly white, and located 15 miles away. The buses were financed, driven, controlled and maintained by these parents.

Dr. T. E. Wannamaker, president of the South Carolina Independent School Association, enjoys talking about the thoughtful group of parents on Hilton Head Island, who bought a plush, air-conditioned bus to carry their children in style and comfort the 120 miles round trip to and from the Beaufort Academy, in Beaufort, S.C. The survey of segregation academies further suggests what many observers had already concluded: that parents do not move their children from public to private schools because of threats of increased busing. Not only is busing a way of life in private, segregated academies; it is in the segregated schools where proportionately more busing is done and for longer distances. Perhaps there is another reason why parents don't want their children in integrated schools.

BUSING AND RACISM

That "opposition to all busing as undesirable is clearly racist in nature" is the conclusion which the U.S. Commission on Civil Rights reaches in a new publication entitled *Racism in America and How To Combat It.* The study explains that Negroes, in attempting to cope with de facto residential segregation "proposed busing students from where they live to schools in other areas so as to achieve racially mixed student bodies in each school." This action, the report says, "evoked two hostile responses from many of the white parents whose children were concerned."

The report continues:

"The first was an even stronger defense of the neighborhood school principle. This principle had originated mainly for convenience reasons, but now formed a useful instrument for continued institutional subordination.

"The second was opposition to all busing of students as inherently undesirable because of delays, child fatigue, added costs, and other ostensibly 'technical' reasons."

In suggesting that opposition to busing tends to be racist the commission notes the high proportion of white students in rural areas, suburbs, and Catholic big-city school systems who have used buses for years without arousing such complaints.

This argument is underlined by the fact that every day of the school year in America, 17 million children are bused to school and home again, and not just in areas where there is court-ordered desegrgation. As a matter of fact, court-ordered desegregation has tended to reduce, rather than increase the amount of busing of students.

HEW AND BUSING

The recently-resigned Southeastern regional director of HEW Paul Rilling, said in his resignation statement that "busing is not involved in the vast majority of Southern school desegregation plans." He added: "Total busing mileage, in fact, decreased in most Southern states as desegregation takes place."

In an interview with the *New York Times*, Rilling gave further details. In a survey of all school districts that had achieved at least 12 per cent desegregation in the five Southeastern states, in Georgia, Mississippi, and Tennessee, busing mileage went down, while only in Florida and Alabama did it increase or remain stable.

Rilling knew of only one district in his region where busing had been "substantially" increased—in Clark County, Ga., where school board officials voluntarily instituted more busing than HEW demanded in order to spread the impact of desegregation more evenly. . . ."

Busing, like law and order, has become an emotionally charged code word. Yet the facts indicate that the mere act of busing is not the issue. Segregationists will continue to rail against the use of busing to achieve desegregation while quietly continuing, and oftentimes increasing, busing of students to maintain the racial *status quo.*

Following are the percentages of pupils bused in each of the 10 "segregation academies" sampled:

	Percent
Faith Christian School, Ramseur, N.C.	97
Enfield Academy, Whitakers, N.C.	75
Evangeline Academy, Villa Platte, La.	75
Kenston Forest Academy, Blackstone, Va.	70
Macon Academy, Tuskegee, Ala.	65
Autauga County Private School Foundation, Prattville, Ala.	63
Tallahassee Christian School, Tallahassee, Fla.	50
Flint River Academy, Woodbury, Ga.	45
Indianola Academy, Indianola, Miss.	40
Wade Hampton Academy, Orangeburg, S.C.	40
Average	62

Following is the average number of miles traveled by bused pupils in the 10 "segregation academies" checked:

Enfield Academy, Whitakers, N.C.	35
Macon Academy, Tuskegee, Ala.	22
Flint River Academy, Woodbury, Ga.	20
Faith Christian School, Ramseur, N.C.	17
Indianola Academy, Indianola, Miss.	17
Kenston Forest Academy, Blackstone, Va.	17
Tallahassee Christian School, Tallahassee, Fla.	15
Wade Hampton Academy, Orangeburg, S.C.	15
Evangeline Academy, Villa Platte, La.	8
Autauga County Private School Foundation, Prattville, Ala.	8
Average	17.7

OFFICE OF THE VIRGIN ISLANDS REPRESENTATIVE TO WASHINGTON, D.C.,
Washington, D.C., July 17, 1970.

Hon. CLAIBORNE PELL,
Chairman, General Subcommittee on Education, Senate Committee on Labor and Public Welfare, New Senate Building, Washington, D.C.
Attention of Mr. Stephen Wexler, Counsel.

DEAR MR. CHAIRMAN: Confirming the telephone conversation today between your Mr. Wexler and Mr. Anderson of my staff, I wish to invite your attention to S. 3883, the "Emergency School Aid Act of 1970".

In its present form, the bill applies only to the 50 States and the District of Columbia. However, among the other U.S. jurisdictions where racial isolation, minority group children, and environmnts where the dominant language is other than English—The U.S. Virgin Islands stands as a prototype along with Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands—all as areas which are not included under the provisions of the bill.

It therefore would appear that the bill would be improved by the refinement of the term "State". Should it be the intent of the Subcommittee to clearly extend the provisions of the proposed Act to all areas where it is needed and would be effective, the following language would include all jurisdictions with the potential of participating within its purview.

DEFINITIONS

SEC. 9(j). The term "State" means the fifty States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

The above definition is typical of that used in many similar statutes in education legislation—from Elementary and Secondary through Higher Education. For broader coverage, such as with regulatory legislation, the term usually includes, "in addition to the several States, Puerto Rico, the District of Columbia and the territories and possessions of the United States."

At any rate, inclusion of an appropriate definition of "State" would clearly identify the intent of Congress, minimize any inadvertent oversight, and eliminate the subsequent expense and energy which would be required to include a jurisdiction by amending a Public Law. The latter was the case with respect to Guam's inclusion in PL 89–182, the State Technical Services Act. Fourteen months—and $65,000 in Federal assistance funds—later, PL 89–771 was finally approved and the oversight was corrected.

Should you have any further questions regarding this matter, please let me know. Meanwhile, remember that whatever you may be able to do to include our fellow-American citizens of the Virgin Islands in this and similar beneficial legislation will be most fully appreciated.

Sincerely,

RON DELUGO,
Virgin Islands Representative to Washington, D.C.

[From the New Republic, Sept. 26, 1970]

ANOTHER VANISHING AMERICAN—THE BLACK PRINCIPAL

(By J. C. James*)

For nearly two decades now the South has been at its cunning and resourceful best in frustrating and thwarting all efforts for full implementation of the Constitutional requirement for equal educational opportunity.

Under the dual school system of the South, there had developed what was known as "Negro Education." This was a system within a system, from elementary grades through college and university, both public and private, and to the extent that de jure segregation was Southern, "Negro Education" was a regional phenomenon.

Negro schools in the South, though separate and unequal, made possible the development of a black aristocracy whose origin and substance were rooted in the system of "Negro Education." Traditionally, more black college graduates have gone into teaching than any other profession or vocation. Teaching in the Negro schools of the South offered the largest job market for college and university trained Negroes, as well as the only field where there was an opportunity for unlimited advancement within the system. They could be teachers, principals and supervisors of other blacks in the local districts, and in a few of the states (North Carolina is a good example) they were members of the staff of the State Department of Education, where they had state and regional supervision over black personnel and programs in black schools. In the communities where they lived and worked, especially in the small towns and rural counties, they were the only educated blacks, and as a group formed the largest Negro middle-class—middle-class not only in terms of economics but in total outlook as well. But in addition, and more importantly, they provided a valuable image for black kids. At least they would know that there was something to do other than chop cotton for Mr. Charlie, cook in his kitchen, mop his floors, wait on his tables and perform numerous other menial chores during his lifetime. Black teachers supervised by black principals provided an image of authority and respectability, and last but not least, a better standard of living than most were accustomed to.

Perhaps not since the Civil War has anything struck the South where it lives in the way that school desegregation has. For those caught in the vise created by the transition from dual to unitary school systems, the experience can be a disaster of major proportions for which there is no adequate recompense. The black principal is a prime victim of this disaster.

In the system I have described, the Negro principal was a big man. Frequently, he was the only channel of communication between the black and white communities. He shouldered the mantle of leadership in the black community, sometimes by default and not always effectively, but he was the only one with whom the white power structure would deal; and the smaller the community, the more power he was likely to wield. Moreover, this conforms to the Southern white predilection for messianic leadership among Negroes. They like to choose their Negro leaders, who in turn are supposed to speak with authority and finality on all questions relating to the black community. This simplifies the problem of communication for the whites and, in the past, enhanced the stature of the blacks so chosen. Perhaps the greatest impact of the black principal was upon the kids who observed and aped him day after day and dreamed of standing in his shoes; and for the principal himself, it was a training ground for leadership which, for a black, was seldom available anywhere. These leadership qualities are invaluable for the black community and the nation, and their loss must be regarded as catastrophic.

It is not intemperate to state that at this time, as fast as we desegregate schools, we eliminate black principals. The pattern is clear and inexorable. Teachers are being affected also; in fact many more teachers than principals are being eliminated because of sheer numbers. But the principal is the key figure. For instance, the practice in most Southern communities is to leave the recruiting and hiring of black teachers to the principal, but with the elimination of black principals active recruitment of black teachers ceases.

---

*J. C. James, a Federal Executive Fellow of the Brookings Institution, spent his youth in the South, was associate dean of admissions at Howard University and chief of the Southern Branch of the Division of Equal Educational Opportunities in the US Office of Education.

A look at the border states of Kentucky and Maryland is revealing. Kentucky began to desegregate its schools on a gradual basis right after the 1954 decision, so that by 1964, when the pressure really began under Title VI of the Civil Rights Act of that year, Kentucky was well on the way toward elimination of the dual school system. But in the process of desegregating students, black schools were being phased out and black principals and teachers along with them. According to a National Education Association Task Force Report, December 1965, there were 1440 Negro teachers and 39,788 Negro students in Kentucky in 1955. In 1965, there were 1399 Negro teachers and 55,215 Negro pupils—a 3 percent decrease in teachers and a 15 percent increase in students. In 1954 the number of black principals in the state has been estimated at about 200. As of 1969–70, based on a Kentucky State Department of Education survey, only 36 black principals remain in the state, and 22 of these are in the city of Louisville, including one of the only two black high school principals left in the Commonwealth.

In Maryland, there were 44 black high school principals in 1954. In 1968, there were 31. Contrast this with an increase in the number of white principals from 167 in 1954 to 280 in 1968. In other words, while 13 black high schools and principals were being phased out, 113 white high schools and principals were being added. Even where there had been an increase in the number of high schools, as was the case in 11 counties, the number of Negro principals declined. Already low, there was a net loss of four black principals in these districts while there was a gain of 124 white principals in the same districts for the 1954–1968 period. In four counties—Calvert, Queen Anne's, Washington, and Worcester—there was no change in the number of high schools, yet in all but one (Worcester) the lone black principal was replaced by a white man.

For elementary principals, the story is the same. During the period under consideration (1954–1968) seven of the 24 school districts in Maryland eliminated *all* their black elementary principals. The only deviation from this trend is Baltimore City, where the number of black elementary principals climbed from 52 in 1954 to 74 in 1968. It should be noted, however, that the new principals in Baltimore were appointed to predominantly or all-black schools in a city where the school population is increasingly black. Overall, the state of Maryland has had a 43 percent increase in the number of white principals, and a 29 percent decrease in the number of black principals, except in the city of Baltimore where there has been about a 30 percent increase in the number of blacks.

And the end is not yet in sight. In May 1969, the Georgia Teachers and Education Association found that in 30 selected school districts in the state the number of Negro principals had declined from 16 percent of the total in 1963–64 to seven percent in 1968–69. In Dade County, Florida (Miami) the only black high school principal left in the system will be retiring at the end of the coming academic year. In Louisiana and Mississippi black teachers and administrators have suffered wholesale displacement.

What happens to the black principal when he no longer has a school of his own? Is he fired from the system? Seldom. He is now in the central office where he is the highly visible token of desegregation and director or coordinator of federal programs. If not that, he is given some other title completely foreign to all known educational terminology, a desk, a secretary, no specified responsibilities or authority, and all this with a quiet prayer that he will somehow just go away. To make such indignity more palatable his new assignment is frequently sweetened by a pay boost taken out of federal funds, thus relieving the local exchequer of an added burden. Depending upon his situation at the time, he may elect to retire. This has been a way out for a good many who where faced with reassignment. Perhaps the most common practice is to make him an assistant principal. In a small system where there has been only the one-grade (1–12) Negro school, he may become assistant to the white principal of the newly desegregated senior and/or junior high school; or if his building is continued in use after desegregation, he may still be retained as an assistant under a white principal in the same school where he himself was once the principal.

This is the pattern even when the Negro principal is better qualified in terms of training and experience, and rated "excellent" by his superiors. The point here is that it is quite all right for a Negro to administer or supervise a school which is all or overwhelmingly black, but the moment it becomes substantially desegregated the principal must be white. Of course there are exceptions to this, but they only prove the rule. The unkindest cut of all is for a former principal to have to return to the classroom as a teacher at reduced pay, status and prestige, and irreparable damage to his self-esteem. This is not to belittle the thousands of competent, dedicated teachers, but for a former principal this is a demotion. Moreover, when this happens, he may be assigned outside his field of competence; then when he does not measure up he is accused of incompetence as a basis for dismissal.

Still other devices remain for the segregationists to use. Former black principals are being made directors of material centers. In essence, these are warehouses for the millions of dollars of supplies and equipment purchased with federal funds under various titles of the Elementary and Secondary Education Act of 1965. Other former principals are now visiting teachers, counselors, directors of physical plant or buildings and grounds, librarians, book supervisors, and a myriad of other things which defy title or description. In some few cases the assignments are genuine jobs with genuine responsibilities. Most are not.

The Negro principal has been important in the past for the position of authority and responsibility which he occupied in the system of "Negro Education" in the South. With the passing of that system, it would appear from the record that he is threatened with extinction, and the implications of this are startingly grave for Negro leadership capability in the years to come. Since the best Negro minds have traditionally gone into education, it remains the greatest single reservoir of talent and skills so necessary to the changing South, and the deliberate destruction of this valuable resource is one of the tragedies of our time.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 17, 1970.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Education, Committee on Labor and Public Welfare.

DEAR MR. CHAIRMAN: I have been closely following your hearings on the Emergency School Aid Act of 1970, S. 3883. As you know, I am deeply concerned about the problem of ending segregation in the North as well as the South.

I would appreciate it therefore if you would include in the record of your proceedings the attached article I wrote which sets forth many of my views on this matter.

Sincerely,

ABE RIBICOFF.

Enclosure.

[From Look, Sept. 8, 1970]

DO MOST AMERICANS SECRETLY WANT SEGREGATION?

(By Senator Abraham A. Ribicoff)

Last February 9, in a speech on the floor of the United States Senate, I accused my own part of the country, the North, of "monumental hypocrisy" in its treatment of the black man. My speech occurred during debate on an amendment calling for a uniform national policy on school desegregation. Sen. John Stennis of Mississippi sponsored the amendment. I said I would support Senator Stennis.

In the speech, I argued that what is evil in Mississippi does not become a virtue when it is practiced in Connecticut. We Northerners have been too eager to point out the horrors of Southern segregation originally based on law (*de jure*), while moving to the suburbs and segregating our schools according to our housing patterns (*de facto*).

Of course, Presidents, senators, sociologists and boards of education can debate the relative evils of *de jure* and *de facto* segregation all they want. But for the black child who is forced to suffer a segregated education, there is no difference.

Whether you call it *de jure* or *de facto*, it is segregation—pure and plain. For the black child, it means white people don't think his life is as important as a white child's, or that he is good enough to associate with their children.

How the message comes, whether by *de jure* or *de facto*, is irrelevant. What counts is the damage. That is the same in both cases. It often is permanent, jeopardizing the black child's entire adult life. No legal phrase can soften the blow or end the pain. The phrase *de facto* has only one purpose. It provides a "respectable" screen behind which white Americans can discriminate against black children.

Without question, many Southerners hoped the Stennis amendment would slow down integration in the South. Though the states that had dual school systems are desegregating under constitutionally based Supreme Court orders that nobody can change, some hard-core resisters are still trying to circumvent those orders by such methods as segregated classrooms in "integrated" schools or with private schools for whites. Clearly, any kind of slowdown in the South is unacceptable.

But it is time for us to stop looking only at the motives of the South. What about the motives of the rest of us? How committed are we to integration in our own backyards?

Those of us in the North should begin to look honestly at ourselves and see that our contribution to integration has been to refine the art of making sure blacks can ride in the front of buses we never ride, can live in someone else's neighborhoods and can work in the lower reaches of our organizations.

The fundamental problem is the increase in *de facto* segregation in both the North and the South. As long as this nation avoids facing the issue of *de facto* segregation squarely, many will insist that such segregation is accidental and therefore not illegal. This does more than absolve the North of responsibility for the unequal education afforded black children in their own communities. It also is an open invitation to the South to emulate the North.

In time, the South can argue that it has ended *de jure* segregation and replaced it with the *de facto* kind. As proof, the South will soon be able to say its cities and suburbs are just like the North's—black cities, white suburbs. Then what will our tolerance of *de facto* segregation have achieved? I argued seven months ago that we needed a national policy to end segregation in the North as well as the South. The need seems even more urgent now. If anything, recent actions by the President and the Congress have strengthened my conviction that America is heading down the road to apartheid, a strict separation of the races, based on *de facto* segregation, and that nobody who has the power to alter this course appears willing to do so.

The Senate did pass the Stennis amendment. But the Senate-House conference committee watered it down to the point where it marked a giant step backward. For the first time, Congress wrote into law the distinction between *de facto* and *de jure* and singled out only *de jure* for government action.

On March 24, President Nixon told the nation that while *de facto* segregation was "undesirable," his Administration would require no steps to end it, in either the North or the South.

Then, on May 21, the President introduced his Emergency School Aid Act of 1970, a two-year, $1.5 billion package designed to promote desegregation. This legislation provides financial assistance for *de jure* school systems that must desegregate.

But the President's program also builds on the shortcomings of the earlier desegregation message with regard to *de facto* segregation. It doesn't require anything of anyone. It is purely voluntary. If you want to desegregate, fine. There will be money available to help you over the hurdles. If you don't, that's OK, too. It's not illegal. The decision is yours. The Federal Government will stay neutral.

In short, *de facto* segregation is still a "U.S. Government Approved" product. The President's program allows us all to continue to talk a good game of integration while serenely practicing segregation. The message to the South is unmistakable: If you segregate your society as well as your schools, as we do in the North, we can all segregate together.

What bitter irony that the model for American apartheid should come from the North. Most of us always believed apartheid would come exclusively from the South, whose legacy of slavery and legalized segregation was fundamentally responsible for most of the racial tension in this nation. There is little doubt that if life had been better in the South, the black man would have stayed. He would not have embarked upon one of the greatest and swiftest migrations of a single people in our history.

But the South, no matter what happens with this month's school-desegregation drive, has no monopoly on being brutal to the black man. When he moved North, our welcome was a ghetto, an unemployment line, a substandard tenement, a poor school and no medical care. And all our criticism of the South, no matter how justified, cannot excuse or erase these facts. The North has been just as successful in denying to the black man and his family the opportunities we insist upon for ourselves and our families. Only we tell ourselves it isn't our fault. The institutions are responsible. There is nothing we can do. It's a terrible "accident," a fact all of us may decry, but for which few of us will accept responsibility.

An almost classic example of this kind of thinking occurred recently in Pontiac, Mich., when the Board of Education told a Federal court that the city's schools were segregated because its neighborhoods were segregated. The Board agreed with the black parents who had brought suit that a black child's segregated education was inferior and harmful and that the resulting damage was irreparable. But the Board argued that, since it had not created the segregation, it had no responsibility to correct this admittedly harmful and devastating condition.

The U.S. District Court Judge, Damon J. Keith, ruled otherwise. He found that despite its frequent pronouncements in support of integrated education, the Board had used its powers to perpetuate segregation and prevent integration.

The segregation in Pontiac is no accident. Nor is it in many American communities. Unlike its Southern counterpart, Northern segregation may not be traceable to one official action. But the thousands of individual decisions—by school boards, real estate brokers, businessmen, politicians, and private citizens—that created *de facto* segregation were all based on the same objective as the official *de jure action*: to keep blacks and whites separate.

Furthermore, a segregated education is harmful to white children as well. White students having no contact with blacks during their school years receive a distorted view of American society. Many of them acknowledge this fact and complain about it.

NORTHERN SEGREGATION IS UNOFFICIAL, BUT IT'S STILL SEGREGATION, PLAIN, PURE, BAD—AND POPULAR

We can begin by recognizing that we don't have to wait for the Supreme Court to rule on *de facto* segregation. The President and the Congress have all the power they need. The longer we wait, the worse the problems will be.

The Supreme Court originally acted against segregation in 1954 largely because every other political institution refused to act. If the President and the Congress continue to abdicate their constitutional responsibilities, they will only succeed in paralyzing the courts, which cannot carry the entire burden by themselves. Or, taking their cues from a reluctant Washington, courts may begin to give legal sanction to *de facto* segregation.

We must also recognize that focusing only on integration in our central cities will simply drive many of the remaining whites to the sanctuary of the surrounding suburbs.

A recent opinion poll reported that most Americans support integration and are willing to send their children to integrated schools. Substantial opposition to integration generally occurs when schools and neighborhoods cease to reflect the society at large. But this need not be an insurmountable problem if we view the entire metropolitan area—including the suburbs—as a whole. The percentage of blacks in most of these areas is less than 20 percent. In fact, in the major metropolitan areas in 1969, blacks made up only 12 percent of the population.

Our goal then should be a national policy to end segregation in all our schools, no matter what we call that segregation or how it occurred. We can't expect this to happen overnight. But we can require that all school districts in a metropolitan area formulate plans now to end segregation in all our schools within ten years. Every area's plan must provide for uniform progress each year, with the result being an end to all racial segregation in the final year.

Only when we require school integration throughout our metropolitan areas can we guarantee sufficient stability to avoid the white flight that has characterized large-scale integration thus far. Variations should be allowed, but only those that occur within the context of obtaining general racial balance.

Our policy, and the methods of achieving it, must be compulsory, all-inclusive and based on a timetable. We have had enough halfway houses for human rights in this country. They don't work. Left to our own devices, we will behave just as the South did for so many years—long on deliberations and short on speed.

Many argue that the suburbs never will go along with this. My answer is to end all Federal educational assistance to any individual school district that refuses to participate in its area's plan. Federal assistance also should be denied any state that gives aid to a school district that does not participate in such a plan.

Those communities that are hard-pressed to finance integration will need whatever help we can give them. Therefore, as the President has suggested in part, the Federal Government should provide school districts with funds to cover the additional expenses involved in desegregation. Cost is not a valid reason for the continued denial of human rights.

Talk of integrating suburban schools often results in frantic discussions about busing. Much of this issue is a "red herring." Millions of American children already are bused to school. Suburban parents often insist upon the opportunity for their children to ride on a school bus as a matter of right.

Moreover, busing is only one technique for integrating schools. Many school districts have successfully integrated their schools by redrawing district lines, pairing neighborhood schools, and locating new schools in areas that make integration easier. These techniques have actually reduced the amount of busing in some areas.

Many who object to busing don't really object to the bus ride. Their concern is the school at the end of the ride. As long as broad disparities exist in the caliber of students, teachers, atmosphere and equipment in our schools, I can understand a parent's concern over proposals that would take his child from a school he knows to one that is unknown.

America cannot allow these disparities in its schools to continue. But the solution is not continued opposition to integration. Nor is it a call limited only to improving ghetto schools. Integration and the improvement of all schools must go forward together.

In the long run, though, lasting school integration cannot occur in a segregated society. It is a fantasy to think that integration can be achieved by letting black children attend our schools when we won't let their parents live in our neighborhoods. That was the basic point I sought to make last February. It is of critical importance.

Some 80 percent of all the new jobs developed in the past 20 years are in the suburbs. Blacks must have access to those jobs and to homes near them. We should encourage the suburbs to provide low-income housing. Private industry should hire more blacks and refuse to move into a suburb until housing for their low-income workers is provided. The Federal Government should refuse to locate its facilities or allow its contractors to locate in areas that do not provide low-income housing.

At the same time, the Federal Government must recognize the severe financial problems confronting suburban communities throughout the country. We therefore should supply additional funds to those suburbs that provide housing, employment and education for blacks in order to cover the additional expenses they have as a result of these activities.

I realize that this is a tall order, one that causes many supporters of integration to despair of the likelihood that we ever will take these steps. Some liberals even oppose a uniform national policy on desegregation on the grounds that spreading the skimpy Federal resources for implementing desegregation across the country will totally destroy their usefulness; that *de facto* segregation is a complex process against which we must move very carefully and slowly; and that moving in the North will generate such opposition that progress will stop everywhere.

But to me, these arguments are as unpersuasive today as they were last February. The Congress has said it would provide the men and the money to implement desegregation on a national scale. Tripling Federal school-desegregation-enforcement activities would cost only $10 million more a year. This country presently spends less than $5 million a year in this area.

The "go slow" argument is based on the same reasoning that sent many Northern liberals into hysterics when it came from south of the Mason-Dixon line.

Except we don't even have a policy of "go slow" in the North. We have a policy of "no go."

On the third point, that moving in the North would create enormous opposition, I have always assumed that we sought integration—and still seek it—not because we think it is popular but because we prize certain basic human rights. Nobody ever argued that integration was popular. But that doesn't justify a double standard for black children that says what's bad for you in the South is good for you in the North.

There is another question that we ought to settle once and for all: Why should we fight for integration when many blacks themselves call for separatism?

It is true that some blacks don't want integration. This is an understandable paradox. White tokenism in both the North and the South has made these blacks frustrated, bitter and angry. They want only to be left alone.

But it's a curious kind of morality that drives blacks to such despair over the possibilities of achieving integration and then uses this despair to justify doing—or not doing—what we have always done or not done.

The most important fact is this: Most blacks still want integration. They cling to the same hopes and goals America has held out to every other group. Denying them their rightful opportunity because a minority of blacks has become impatient, and with good reason, is a shabby betrayal of the ideals this country is supposed to represent.

Making integration a national goal should not make it an impossible goal. I fervently hope that our commitment to integration is not so fragile that we shall discard it when we are asked to meet it. There are more constructive things for us to do than write obituaries for the cause of human rights in America.

STATEMENT

OF

IRVING SHEU KEE CHIN

Before the

SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

IRVING S. K. CHIN
Chairman
Chinatown Advisory Council to the
Borough President of Manhattan
30 Broad Street
New York, New York 10004
HA 2- 7740

STATEMENT

OF

IRVING SHEU KEE CHIN

Before the

SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

Mr. Chairman and Members of the Committee:

I voice my unqualified support for Senate Bill S.3883 "Emergency School Aid Act of 1970" 91st Congress, Second Session, sponsored by Senator Jacob K. Javits to provide financial assistance to improve education in racially impacted areas and to assist school districts in meeting special problems incident to desegregation in elementary and secondary schools. Specifically, I totally commend the addition to the definition of the term "Minority Group Children" under said Senate Bill to include the class of "Oriental Children":

> "Section 9.(d)(1) The term 'minority group children' means (A) children, aged five to seventeen, inclusive, who are Negro, American Indian, or Spanish-Surnamed American, and (B) (except for the purposes of section 4), as determined by the Secretary, children of such ages who are from environments where the dominent language is other than English (such as French speaking and Oriental children) and who, as a result of limited English-speaking ability, are educationally deprived..."

The Chinese Community of the United States seeks an equitable participation under this Senate desegregation bill for education assistance in the schools for which the Chinese are entitled as Americans. On June 28, 1962, I previously testified before the Senate Judiciary Committee, Subcommittee on Escapees and Refugees, requesting liberalization of Chinese admission into the United States during the height of the Hong Kong Refugee Exodus. The compelling reasons for increasing the numbers of Chinese admitted into the United States from the mere 105 persons per annum and the revising of the then patently discriminatory Immigration Law is more fully discussed in my 1962 statement to the Senate Judiciary Committee which is annexed hereto. I speak once again as a representative of the Chinese Community in my capacity as Chairman of the Education Committee of the Chinatown Advisory Council to the Borough President of Manhattan, which represents over 90 Chinese organizations in New York Chinatown. I have been closely involved in representing the Chinese people, as indicated by my affiliations as Chairman and Dean of the Chinese Christian Youth Conference of the East Coast, President of the Chinatown Jaycees, legal counsel to the Chinatown Planning Council, Inc. and numerous other Chinese civic organizations as outlined in the attached resume.

THE CHINESE - THE SILENT MINORITY WITH A QUASI MINORITY STATUS

A. The Chinese - The Silent Minority.

The interesting paradox of the Chinese people in the United States is that while we are by definition a minority among the various ethnic and religious groups composing our American Society, nevertheless, we have never verbalized our problems or actively requested equal status as a minority class even though we have not been accorded treatment equal to other minority groups. Our plight is unheard for the fundamental reason that the Chinese may be accurately characterized as a "Silent Minority."

We have been a Silent Minority for the following reasons:

1. Education. Our Chinese ancestors, who were transported to this country as laborers, did not voice their rights as a minority because they were handicapped by their English language deficiency and a lack of familiarity with the American governmental system.

2. Fear of Government. We have been a Silent Minority because of fear of governmental repression as a result of the common experience of all Chinese with immigration experiences.

3. Political. Because the Chinese represent an almost small and insignificant voting bloc compared to other ethnic groups, we carry little weight for practical politicians who are persuaded only when one can muster substantial votes for their election.

4. Philosophical. Philosophically the Chinese have remained a Silent Minority in that our close family ties and law abiding attitude have engendered a philosophy that patience and time will eventually solve our many problems through change over centuries rather than immediate response by activism.

5. Cultural. The Chinese by nature and cultural heritage are reluctant to exhibit their problems to the public at large due to the loss of face involved and because of a desire to solve our internal and external problems without outside assistance. However, the Chinese Silent Minority must readjust its tactical and philosophical attitude if we are to solve the pressing problems confronting the Chinese Community of today.

B. The Chinese - Quasi Minority Status.

The Chinese people, with their penchant for silence and reticence to vocalize their internal problems, have been treated with a quasi minority status in the United States in that we receive less than equal treatment accorded other minority groups. This in practical terms means we are not treated as a member of the majority nor of the minority but of a status lower than that of other minority ethnic groups. Various subtle discriminatory tactics produce many incidents where the Chinese have been given quasi minority rights.

1. Education. It is not uncommon for a Chinese student applying for scholarship aid where minority groups are purportedly given special consideration to be informed by the interviewer that said Chinese student is not eligible since he is Chinese and therefore not a "minority" within the purposes of the scholarship program. The emphasis for the minorities is for the blacks and Puerto Ricans and not for Chinese. Thus, we are not accorded equal minority treatment.

2. Business. The Chinese in business have found that quasi minority status exists for the Chinese with respect to opportunities in business competition. An example of quasi minority treatment is a Chinese bank manager of a New York Chinatown branch office of a

well known banking institution who was elected official representative of the Small Business Loan Administration for the District. He quickly realized that all Chinese clients he referred for business loans were uniformly and completely rejected on various spurious grounds. He resigned, recognizing that he was being used as an image of equality whereas the small business loans were being granted primarily only to the black and Puerto Rican minority groups and that the Chinese were being denied despite the fact that the loans were to be granted to minority groups in particular.

3. Governmental Response to the Chinese. In dealing with governmental agencies at different levels, the Chinese oftentimes have received quasi minority rights less than those accorded other ethnic groups when they assert their Constitutional rights. One personal example was our many attempts to clean up The Bowery which adjoins New York Chinatown of derelict, bums and undesirables. The Mayor had been publically sponsoring clean-up campaigns against such drifters, prostitutes and undesirables in Times Square and Greenwich Village. Nevertheless, for some reason, the police in the local Chinatown area could not similarly remove these undesirables who were moving from Times Square to The Bowery adjoining Chinatown

as a result of the public clean-up campaign. Many of our requests to the Mayor, Police Chief and Police Commissioner took the usual "buck passing" route without any effective action being taken with the candid comment at times that The Bowery "always had bums and derelicts anyway" which seemed to be the raison d' etre for the inability of the police to remove the undesirables from Chinatown as they could from Times Square.

Finally, the power of the press in the person of William Federici of the New York Daily News wrote "After 4 Months, Chinatown Gets Pledge to Oust Bums," a copy of which is annexed hereto. Immediately after said article reached the news stands, I received a telephone call from the Police Chief as a result of my gentle suggestion that our Committee was considering transporting said derelicts, addicts and undesirables to be deposited at Gracie Mansion where the Mayor resides as a symbolic gesture of our problem. Immediately, the police task force was ordered into Chinatown and the problem was temporarily alleviated. Because we do not generate votes, we oftentimes find that the Chinese Minority is not heeded when it requests necessary changes and reforms affecting the Chinese Community at large. Thus, at various levels of business, academic, civic and social areas, the Chinese who are a Silent Minority have been treated with a quasi minority status as we have been denied rights which have been duly accorded other minority groups.

IMMIGRATION INFLUX SINCE 1965

The pre-1965 Chinese immigration quota was a discriminatory and inequitable 105 persons per annum in contradistinction to the 65,361 quota from Great Britain and Northern Ireland, which allocation was never fully utilized. Many Chinese families were separated for many years without hope of being reunited with their loved ones in America, as a result of the discriminatory immigration laws.

In 1965, the revised immigration law removed the huge backlog of pending Chinese immigration cases so that instead of 105 persons, 8,000 persons annually are now arriving into New York Chinatown. Multifarious problems are emerging from a heavy influx of Chinese immigrants into a small geographic area known as New York Chinatown. The over-congested Chinatown conditions can be compared to the college stunt of squeezing as many students into a Volkswagen as is humanly possible. The Volkswagen at some point becomes over-saturated with detrimental results to all occupants should they try to squeeze any additional persons into the remaining area of the Volkswagen. Similarly, the Chinese who have been forced by circumstances of English language deficiency and employment are restricted geographically to the New York Chinatown area with the many social, cultural and economic problems evolving which were previously unknown. Copies of the Sunday News article "Trouble in Chinatown" by Christina Kirk dated March 17, 1968, and the recent New York Times article "Neighborhoods: Chinatown is Troubled by New influx" of June 16, 1970 by Murray Schumach describe more fully the many problems now besetting Chinatown.

TWO SYMPTOMATIC CHINESE INCIDENTS

Two recent shocking incidents have highlighted the Chinese immigrant problem in New York City. One was the recent immolation of a 21 year old Hong Kong Chinese youth in Times Square before many horrified observers. He was in the United States primarily seeking educational opportunities and had been enrolled at New York University in the computer field. While his knowledge of mathematics was sufficient, his English, however, was inadequate, resulting in his becoming a drop-out casualty due to his language deficiency. His depressive mood coupled with the loss of face of having failed in education, which has always been revered by the Chinese since ancient times finally culminated in his tragic self-destruction by immolation.

The second incident concerned the stabbing to death of a 14 year old Hong Kong youth in New York Chinatown crystalizing growing teenage gang problems in the Chinese Community. The alleged perpetrator is a 17 year old Hong Kong youth. Many of the Chinese teenage drop-outs are unable to adjust to the American Society due to language difficulties and are neither able to continue their education nor to find satisfactory work. The shock of a knife killing of a Hong Kong Chinese youth so electrified Chinatown and the New York community at large that the incident received extensive newspaper, television and radio coverage.

Such incidents, heretofore unknown in the Chinese Community, which had set an exemplary record for family harmony and lack of criminal history, are directly attributable to the lack of English language facilities and social service agencies available in the racially segregated area known as New York Chinatown. These two symptomatic incidents manifest the growing cancerous problems confronting the Chinese Community which is forced by language, employment and cultural considerations to remain in an overcrowded geographic area of Chinatown.

FORMATION OF CHINATOWN ADVISORY COUNCIL TO THE BOROUGH PRESIDENT OF MANHATTAN

The Chinatown Advisory Council to the Borough President of Manhattan was organized as a unified entity representing over 90 Chinese organizations in the Chinese Community to resolve its internal and external problems through better coordination with governmental agencies. The Education Committee was mandated by the Chinatown Advisory Council to implement a much needed English Language and Multi-Service Center. As Chairman of the Education Committee, I have met with various echelons of governmental agencies at city, state and federal levels to seek funding for implementing the English Language and Multi-Service Center.

NEW YORK CHINATOWN ENGLISH LANGUAGE CENTER

Many of the social ills permeating the Chinese Community are directly traceable to the lack of English language comprehension common to most incoming Hong Kong immigrants. The following language programs would be especially beneficial to the Chinese immigrants:

A. English as a Second Language. A comprehensive and intensive English language training program for persons of all ages from pre-kindergarten through adulthood, should be implemented with a bilingual approach giving special attention to the new immigrants to overcome their English language deficiencies. Insufficient attention is presently accorded this problem since very little funding is available to alleviate this linguistic handicap. While other more vocal and demonstrative ethnic minorities receive millions in educational funding, the Chinese Silent Minority in contrast are recipients of an insignificant distributive share.

B. Teenage High School Drop Outs. It is important to solve the teenage high school drop-out problems among the new immigrants and to encourage them to continue their education by special tutoring and accelerating their language comprehension. Many Hong Kong teenage youths are qualified but unable to compete with their contemporaries because of language difficulties which cause boredom and frustration. As a result, they join teenage gangs, as highlighted by the recent teenage gang killing.

C. Adult Education. Many Chinese adult immigrants who were professionals with graduate degrees are unable to assume their equivalent occupation in the United States due to language handicaps. With English language training, they would gain employment in a more similar professional category then is presently afforded them. Many college professionals are frustrated when they must assume menial manual labor positions totally unrelated to their previous training. A recent example is the Chinese with a Ph.D. in psychology being unable to find suitable work and considering working as an ordinary dishwasher. Other college graduates are unable to support their families by even the normal Manpower Training stipend of $70 per week and at times must be forced to work in restaurants as dishwashers and waiters. These are mere examples of the multitude of cases where talent and ability are wasted. By raising their English language capability, they would be more useful citizens in achieving work satisfaction to avoid mental illness due to frustrations.

D. Employment Training. Many corporations have indicated their desire to hire Chinese as trainees because of the Chinese reputation as hard workers but said corporations require a minimal English comprehension as a condition for employment. Once the language proficiency is achieved, corporations would be willing to give the Chinese an opportunity to demonstrate their ability. Additional Manpower Training programs sponsored by the Department of Labor would greatly increase the opportunities for the Chinese who must seek employment outside of the over-saturated and tradional restaurant and laundry work categories.

E. Housing. The acute housing problems would be overcome if the Chinese had sufficient English language capability to seek better housing in areas outside of the immediate Chinatown vicinity. Total reliance and dependence on residing in the local Chinatown environs due to language considerations is a direct cause of the insufficient housing available for the new immigrants.

F. Teacher Training. Many persons might qualify for a Certificate of Competency eventually leading to obtaining a teaching license if they could increase their proficiency. Such professionals would be of great service to the bilingual programs which are desperately needed in the Chinese Community.

NEW YORK CHINATOWN MULTI-SERVICE CENTER

Although the United States equitably revised its Immigration Laws in 1965 to permit more Chinese to be reunited with their families, unfortunately the United States did not concomitantly provide a solution for resolving the consequential social and economic problems clearly predictable from such an increased number of immigrant arrivals of over 8,000 persons per annum occupying the New York Chinatown area.

We require a Center similar to the Centers established for the Hungarian and Cuban refugees where the new immigrant would be able to have his problems in housing, employment, English language, health, day care center and multitude of problems all resolved at one Center. Such Centers have been successful for over 300,000 Cuban refugees who have many agencies working on their behalf to resolve their adjustment problems from the time of their initial entry in Florida by relocation and employment assistance throughout the entire United States.

CHINATOWN'S LIMITED SERVICES

In contrast to the Cubans, the Chinese community has only a few agencies to copy with these substantial adjustment problems. The numbers of existing agencies in Chinatown can be counted on the fingers of one hand, particularly where bilingual personnel are limited due to lack of money. Funding is extremely difficult for the Chinese Silent Minority who are often times shortchanged and bypassed by both governmental and private agencies. The United States must recognize the overwhelming social problems confronting the Chinese community which has a paucity of resources available to cope with the explosive situations.

TYPICAL CHINESE CASE STUDY FOR MULTI-SERVICE CENTER

A Multi-Service Center for the Chinese would be essential to resolve the increasing problems of the Chinese immigrants. A typical case study illustrates the day to day problems confronting a family moving thousands of miles to a foreign country where they are unable to communicate in the native English and where they must learn to survive in a completely different environment with all the uncertainties involved for a new alien family.

The following is a typical family of Mr. and Mrs. A, who have four children, and arrived from Hong Kong with none of the family being able to speak English. Their immediate housing problem is to find an apartment after they have been living in a small living room of a relative. Because of the language problem, they must locate an apartment in Chinatown environs. They succeed in finding a one bedroom apartment in an old tenement house in Chinatown where six are crowded into said apartment.

Mrs. A is nine months pregnant with the child anticipated momentarily and needs a medical checkup in a hospital, together with assistance in applying for Medicaid. Mrs. A must also learn English in order to communicate with her doctor as well as to help her children in their day-to-day requirements.

Mr. A, the husband, has been a truck driver for many years in Hong Kong and is working in a restaurant after his arrival in New York. He cannot obtain a driver's license until he learns sufficient English to take the driver's test for a license.

The eldest son is 22 with several years of college training, but is required to work as a waiter to help support the family. He is unable to utilize his education in a different occupational capacity because of language difficiency and is not able to continue his education. The eldest daughter who is 19 is a high school graduate with a limited seventh grade English reading level. She is extremely shy and works as a seamstress in the garment factory and is extremely unhappy with her situation. The second son, who is 15 years old, attends high school. He cannot communicate with either his teachers or classmates and has no special English remedial help to accelerate his English comprehension. He is bored and frustrated with school work since he understands very little that transpires. He is a potential high school drop-out and an eventual teenage gang member.

The other child is in the sixth grade and because of language difficulty finds school extremely difficult which causes him to become oftentimes a truant from school. The A family is a typical Chinese family situation of the new Hong Kong immigrants. This case when multiplied by a thousandfold reveals the statistical impossibility confronting the limited agencies to handle such an excessive number of family problems.

THE CHINESE-AMERICAN CONTRIBUTION IN AMERICA

Historically, Chinese who have come to the United States have become useful and productive citizens once they have integrated into the American society by gaining sufficient education to enter every phase of American business and industry. Accordingly, Chinese are now scientists, engineers, lawyers, doctors, etc. Many Chinese are working in the NASA space explorations and and have contributed mightily to the growth of America's progress. Two Chinese are Nobel prize recipients in science. These are mere examples of the outstanding record that the Chinese-American has set when given a fair opportunity to obtain the necessary education for a productive career.

The Chinese in America have traditionally had a spotless record and an absence of juvenile delinquency and old age problems. Prior to 1965, it was not difficult to integrate 105 persons into the entire United States so that they could assimilate without any difficulty. With 8,000 persons arriving in New York annually, it is a totally different situation with alarmingly explosive ramifications. The Chinese are unable independently to unilaterally cope with these problems without governmental assistance. Educational funding is the appropiate form of governmental assistance to the Chinese who deserve an opportunity in equal participation as we are finally recognized and accorded equal minority status.

THE PANACEA FOR THE CHINESE-AMERICAN PROBLEM, TO WIT, THE EDUCATIONAL SYNDROME PROCESS IS BARRED TO THE CHINESE BY EXISTING DISCRIMINATORY PRACTICES.

A. The New York City Metropolitan Reading Achievement Test Which Is The Basis For Determining Educational Funding Is Inequitable, Invalid and Patently Discriminatory To The Chinese.

The solution or panacea to the Chinese problem is clearly to obtain educational funding to permit the new immigrants to adjust to the American mainstream as expeditiously as possible. We must accelerate the Adjustment Gap for the 8,000 per annum arriving in New York City annually so that the tension of the overcrowded conditions can be alleviated. Although it is recognized that the educational syndrome process is the route to be taken, unfortunately, the Chinese find that they are being treated as second-class citizens as a minority group with regard to educational funding.

The New York City Metropolitan Reading Achievement Test is instituted by the Board of Education for determining the distribution of the educational funds from federal and state sources. Said reading test is patently discriminatory to the Chinese in that only those students who are selected by their teachers as possessing a minimal English proficiency are permitted to take the reading test. We are oftentimes met with the comment from various echelons of the Board of Educational during our endeavors for educational funding that "It is too bad that the Chinese do so well on the Metropolitan Reading Achievement Test, otherwise they might receiving funding."

Closer examination of the aforesaid reading test reveals it to be unfair and discriminatory to the Chinese immigrants in that the final test results do not accurately reflect the true situation. Since many of the Hong Kong students do not have even a minimal English reading ability, they are excluded and ignored from the final test results. One can see how this test is misleading. Hypothetically, assume 90 students in a class of 100 would be Hong Kong students with no English reading ability whatsoever. The 90 Hong Kong students are not permitted to take the test while the remaining 10 do well in their reading test results. The anomalous result is that the Board of Education would deny educational funding to the Chinese represented by the 100 students since the test results indicated a higher reading ability than other ethnic groups. The fact that 90 out of 100 were totally incapable of any reading ability would be totally disregarded. The ironic determination is that the Chinese would be denied any funding on the high test score despite the fact that 90 Hong Kong students were completely lacking in English comprehension and were desperately in need of English language training. Thus, the New York City Metropolitan Reading Test does not accurately depict the actual educational facts of the Chinese students. These 90 Hong Kong students undoubtedly will become drop-outs through frustration because of their inability to understand the classes. We are seeking the elimination of such a discriminatory and invalid test which deprives the Chinese of their right to be included in this educational funding.

B. Decentralization Law Circumvented.

By statute, educational funding is to be determined at local district levels under decentralization guidelines. Accordingly, we submitted written proposals at local school district levels only to learn subsequently that the Central Board of Education had already mandated 95% of the total funds to school districts for continuation of prior programs. Thus only 5% of the total funding was available for new programs. This leaves the Chinese in a most poor bargaining position when competing with so many different ethnic groups who are vying for the remaining 5% available. A court action has been instituted by another school district challenging the Board of Education's mandated decision for funding as being unconstitutional and not conforming to the Decentralization Law. We are still awaiting the determination of the court action with respect to our proposals.

C. New York Chinatown Deserves An Independent And Separate School District.

Chinatown presently lies in a school district extending from lower Manhattan to 96th Street covering an area with many groups and organizations of different political and religious persuasions. The Chinese have extremely little opportunity to have a voice in the determination of educational funding and opportunities for electing persons to the school board sympathetic to our views. Since the local school board under the Decentralization Law is empowered to initiate educational policies to our school district, we must frankly recognize that we cannot compete politically with other ethnic minorities without far greater voting strength than we possess. We have requested that the Board of Education and the New York State Legislature revise the educational school district boundaries so that Chinatown will be granted a separate and distinct educational school district, like Harlem so that we might have a voice in educational policies.

D. Disenfranchised Chinese Parents In School Board Elections.

Under the New York Educational Law designated as Senate Bill S-5690 and Assembly Bill A-7175 passed by the New York State Legislature dated April 30, 1969, whether Chinese parents of school children were permitted as permanent residents to vote for the school board elections was seriously in doubt. The statute was drafted in terms of normal citizenship qualifications so that discussions with the Attorney General's Office and various of our representatives in both the New York State Senate and State Assembly drew their collective opinion that the Chinese parents who were permanent residents but not citizens would be disenfranchised in the school board elections. Many Chinese did not vote due to this statutory interpretation. We are requesting that the New York State Legislature clarifies the present law to permit Chinese permanent residents who are parents of school children in our Chinatown school district be entitled to vote for the school board membership. Since many Chinese who arrived in 1965 have not qualified under the mandatory five-year residence requirement for citizenship, it is obviously unfair to deprive said parents of this essential vote. The Chinese Silent Minority is cast in the same position as the blacks who were denied voting rights under the voter registration qualifications in the South. We insist that this statute be amended to clearly permit Chinese parents who are permanent residents to have the right to vote for the local school board elections.

E. The Chinese Are Denied Due Process Under The Poverty Proposals.

The Education Committee, of which I am Chairman, submitted a proposal for educational funding through the the local poverty district. The regulations provide that where a proposal is denied at local level that the right of appeal is permitted within ten days from the date of denial. As its Chairman, I have never received any notice from the local poverty board that our written proposal was denied, although we have subsequently learned that it was never approved. By not notifying me of the denial and permitting the required time for the appeal to lapse, the local poverty board in essence prevented us from our right to appeal from an adverse decision, which manifestly is a denial of due process.

Once again, the Chinese community, as a minority group, is being denied its due process. This illegal procedure for excluding the Chinese from participation in the educational funding process is typical of the treatment which we as the Silent Minority have endured. Without the protection of the Fourteenth Amendment for the Chinese Minority, one can easily see that the Chinese community is being deprived unfairly of equal participation in the American Educational Mainstream of Progress.

VIOLENCE v. NON-VIOLENCE

At a time in American history when there has been campus unrest and civil rights protests with violence erupting throughout the United States, we are in an age which could be classified as a violent period. For the Chinese, we have the choice of electing the method by which we choose to seek redress for past discriminatory practices and present inequitable treatment, i.e. violent or non-violent, as we are being accorded second-class citizens' status.

Our experience could justify a more demonstrative role for the Chinese since we have met much bureaucratic chicanery in our efforts for educational funding. One can see how easily frustrations can develop when dealing with governmental bureaucracy where there is an absence of sincerity in seeking to resolve the problem. We have been most cordially and sympathetically received in all echelons of the federal, state and city agencies in our efforts for obtaining educational funding. Nevertheless, we fully realize that discrimination has many faces. It is not always open and candid, but it can be circuitous through the bureaucratic chain of command. For example, we were cordially treated by various lower echelons of the Central Board of Education in our attempt to seek initial funding. We were told to work at the district school level to have full discussions which would culminate by submission of written proposals. Ironically, while we were working at the lower district level to formulate our proposals, it is interesting to note that the Central Board of Education had already mandated 95% of the funding for continuation of their former programs which would exclude consideration of any of our new proposals. This is a type of bureaucratic chicanery in having us dissipate our efforts while there was no possibility of funding available. We would prefer the honest approach from the governmental agencies.

Secondly, since I have never received any written notification from the local poverty program with respect to our written proposals, it should be deemed that this is but another form of denying the Chinese their right to be treated as equal Americans. We were never granted the common courtesy of receiving notification on the decision regarding our proposal as we were totally ignored. Furthermore, we were never even accorded the right to be officially rejected on our poverty funding proposal, although this is the sine qua non procedure upon which an appeal is based. Obviously, political considerations motivated this procedure whereby we have never been informed by the governmental agency of the denial. Thus, the Chinese Community has been treated most unfairly and has legitimate grievances for mandatory change.

There are some in our Chinese Community who advocate a much more demonstrative and violent activistic approach, pointing out that the government appears only to react when such violence and demonstrations erupt. The Chinese Community, however, rejects categorically the violent approach utilized by other minority groups. We reject illegal means to accomplish our goals as we seek redress through the lawful procedural process provided by our Constitution. It is our belief that we can work with an enlightened and sensitive Establishment provided they are aware that the inequities to the Chinese exist. It a moral issue that when the Chinese Community seeks to work within lawful procedures of the democratic process, it is incumbent that the Establishment in the Government be responsive in heeding our rightful grievances. Otherwise, we cannot predict what may subsequently occur should other less law abiding segments of the Chinese Community emerge to take the reins of power in the Chinese Community in the event that this non-violent approach fails. We feel that the saving of even one life of the two incidents referred to herein more than justifies the allocation of educational funding to the Chinese Community, particularly since we have been overlooked and by-passed for so many years.

We have received support from Mayor John Lindsay and Deputy Mayor Timothy Costello of New York City. In addition, sympathetic concern has been received from Senator Jacob Javits and Charles Goodell for the plight of the Chinese community. We anticipate that Senators Hiram Fong and Edward Kennedy of the Senate Subcommittee on Escapees and Refugees will continue their efforts in reversing inequitable treatment of the Chinese immigrants.

We ask only that the Chinese be granted equal minority rights and be treated as first-class citizens as other minority groups are presently accorded said status.

THE ORIENTAL MINORITY BILL OF RIGHTS SENATE BILL S-3883 - A STATUTORY BEGINNING

This statement while highlighting the difficulties of the Chinese Community in its educational funding endeavors should be considered as a statement in total support of all oriental minority groups in the United States included under Senate Bill S-3883 entitled "Emergency Schood Aid Act of 1970." While we cite our individual Chinese problems, we repeat that these incidents are found in other minority groups in the United States. We support this Senate bill for improving education in racially impacted areas for desegration in elementary and secondary schools for all oriental minorities, including but not limited to Chinese, Japanese, Filipino, Korean, etc. We share a racial bond in that the discrimination recited herein is also reflected in the other oriental ethnic groups. We need a statutory oriental minority bill of rights which will insure that the oriental minority receives the full measure provided in the Constitution and the Bill of Rights. Unfortunately, the oriental minority if oftentimes overlooked despite the fact that the civil rights statutory legislation are drafted to grant equality to "all races, color and creed." Although the oriental minority is granted by statute a de jure equality, nevertheless, in actuality the oriental does not possess practical de facto equality vis-a-vis other minority ethnic groups.

We applaud Senators Javits and Pell for Senate Bill S-3883, since it is a beginning in the recognition that the oriental people are not included in the statutory definition of minorities. We need this to be clearly expressed by statute in future legislation so that our bill of rights for orientals will be indelibly defined.

THE YIN AND YANG DUALITY IN AMERICA
MAJORITY : MINORITY = OPPORTUNITY : EQUALITY

A. Yin And Yang

The Chinese cosmology concept of Yin and Yang is the harmonious balance of two dual forces which control the universe when they are equally balanced in harmony, that is, negative and positive, male and female, etc.

The world and society as symbolized by circle divided equally by curve line is in complete harmony when both equal forces are balanced.

B. Majority v. Minority Duality in America.

This dual doctrine of Yin and Yang is applicable in the United States in balancing the respective relationships of the majority to the minority. America, as a democracy relies on a equally balanced relationship between the majority rule versus the minority position. To be successful, the rights of the minority must be protected. Once the balance is achieved the democratic process will succeed.

C. Opportunity in America Implies Equality of All Minorities.

America has been depicted as a land of opportunity for all persons regardless of their race, color and creed. Such opportunity must be equally available to all minorities for a successful balance to exist. If each minority group does not receive equal treatment, there is an imbalance in the relationship which will cause repercussions to our society. The Chinese minority has not been treated equally as a minority which requires a redress and there is an imbalance in the present societal structure.

With the necessary revision of the Immigration Law in 1965 to remedy the discriminatory quota system, the United States should have anticipated these emerging social problems in the Chinese Community as a result of the increased numbers admitted. Consequently, the Chinese require the assistance through educational funding which other minority groups are receiving. This governmental assistance is a right that each minority has which will restore the balance presently disturbed.

Using a mathematical proportional equation concept, one can see that under the Yin-Yang Duality Doctrine, the success of the American democratic process can be realized under the following formula:

MAJORITY : MINORITY = OPPORTUNITY : EQUALITY

The opportunity of being an American in America for the Chinese is meaningless without having simultaneously the equal right of other minorities to an education and the opportunities resulting therefrom. This is a dual obligation of first inviting new Chinese aliens to our shores which involves a concomitant duty to expeditiously adjust these individuals into our American Way of Life. These counterbalancing concepts of opportunity with equality of all minority groups in America is expressed by the following poetical stanzas which deserve equal attention in achieving a balance and harmonious societal relationship in America.

> "Give me your tired,
> your poor,
> Your huddled masses
> yearning to breathe free,
> The wretched refuse of your
> teeming shore,
> Send these, the homeless,
> tempest-tossed to me:
> I lift my lamp beside the
> golden door."

> "We hold these truths
> to be self-evident:
> that all men are created
> equal; that they are
> endowed by their Creator
> with inalienable rights;
> that among these are
> life, liberty and the
> pursuit of happiness."

EXHIBITS*

Exhibit A	Statement of Irving Sheu Kee Chin before the Subcommittee on Escapees and Refugees - Senate Judiciary Committee - June 28, 1962
Exhibit B	Resume of Irving Sheu Kee Chin
Exhibit C	Daily News "After 4 Mos., Chinatown Gets Pledge to Oust Bums," by William Federici.
Exhibit D	Sunday News, March 17, 1968, "Trouble in Chinatown" by Christina Kirk.
Exhibit D	The New York Times, June 16, 1970, "Neighborhoods: Chinatown is Troubled by New Influx" by Murray Schmach.

* The exhibits referred to may be found in the files of the subcommittee.

Senator Eagleton. That concludes today's hearings on this measure, and the subcommittee is adjourned subject to call of the Chair.

(Whereupon, at 2 p.m., the subcommittee recessed, subject to the call of the Chair.)

○